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**GOVERNMENT CODE
TITLE 1, DIVISION 4**

**CHAPTER 10
MEYERS-MILIAS-BROWN ACT
(LOCAL PUBLIC EMPLOYEE ORGANIZATIONS)**

3500. Purpose and intent

(a) It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by those organizations in their employment relationships with public agencies. Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies that establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations nor is it intended that this chapter be binding upon those public agencies that provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter. This chapter is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed.

(b) The Legislature finds and declares that the duties and responsibilities of local agency employer representatives under this chapter are substantially similar to the duties and responsibilities required under existing collective bargaining enforcement procedures and therefore the costs incurred by the local agency employer representatives in performing those duties and responsibilities under this chapter are not reimbursable as state-mandated costs.

3500.5 Short title

This chapter shall be known and may be cited as the “Meyers-Milias-Brown Act.”

3501. Definitions

As used in this chapter:

(a) “Employee organization” means either of the following:

(1) Any organization that includes employees of a public agency and that has as one of its primary purposes representing those employees in their relations with that public agency.

(2) Any organization that seeks to represent employees of a public agency in their relations with that public agency.

(b) “Recognized employee organization” means an employee organization which has been formally acknowledged by the public agency as an employee organization that represents employees of the public agency.

(c) Except as otherwise provided in this subdivision, “public agency” means every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not. As used in this chapter, “public agency” does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system as provided in Chapter 5 (commencing with Section 45100) of Part 25 and Chapter 4 (commencing with Section 88000) of Part 51 of the Education Code or the State of California.

(d) “Public employee” means any person employed by any public agency, including employees of the fire departments and fire services of counties, cities, cities and counties, districts, and other political subdivisions of the state, excepting those persons elected by popular vote or appointed to office by the Governor of this state.

(e) “Mediation” means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(f) “Board” means the Public Employment Relations Board established pursuant to Section 3541.

3501.5. Public agency

As used in this chapter, “public agency” does not mean a superior court.

3502. Right to join or abstain; individual representation

Except as otherwise provided by the Legislature, public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public agency.

3502.1 Exercise of lawful action as elected, appointed or recognized representative of any employee bargaining unit

No public employee shall be subject to punitive action or denied promotion, or threatened with any such treatment, for the exercise of lawful action as an elected, appointed, or recognized representative of any employee bargaining unit.

3502.5. Agency shop agreements; payments in lieu of dues or fees; rescission; application; records

(a) Notwithstanding Section 3502, any other provision of this chapter, or any other law, rule, or regulation, an agency shop agreement may be negotiated between a public agency and a recognized public employee organization that has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, ordinances, and enactments, in accordance with this chapter. As used in this chapter, “agency shop” means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization.

(b) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the public agency and a recognized employee organization that has been recognized as the exclusive or majority bargaining agent shall be placed in effect, without a negotiated agreement, upon (1) a signed petition of 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency

shop agreement. The petition may be filed only after the recognized employee organization has requested the public agency to negotiate on an agency shop arrangement and, beginning seven working days after the public agency received this request, the two parties have had 30 calendar days to attempt good faith negotiations in an effort to reach agreement. An election that may not be held more frequently than once a year shall be conducted by the California State Mediation and Conciliation Service in the event that the public agency and the recognized employee organization cannot agree within 10 days from the filing of the petition to select jointly a neutral person or entity to conduct the election. In the event of an agency fee arrangement outside of an agreement that is in effect, the recognized employee organization shall indemnify and hold the public agency harmless against any liability arising from a claim, demand, or other action relating to the public agency's compliance with the agency fee obligation.

(c) An employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support a public employee organization as a condition of employment. The employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to the dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three of these funds, designated in a memorandum of understanding between the public agency and the public employee organization, or if the memorandum of understanding fails to designate the funds, then to a fund of that type chosen by the employee. Proof of the payments shall be made on a monthly basis to the public agency as a condition of continued exemption from the requirement of financial support to the public employee organization.

(d) An agency shop provision in a memorandum of understanding that is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for that type of vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit, (2) the vote is by secret ballot, and (3) the vote may be taken at any time during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during that term. Notwithstanding the above, the public agency and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on an agency shop agreement. The procedures in this subdivision are also applicable to an agency shop agreement placed in effect pursuant to subdivision (b).

(e) An agency shop arrangement shall not apply to management employees.

(f) A recognized employee organization that has agreed to an agency shop provision or is a party to an agency shop arrangement shall keep an adequate itemized record of its financial transactions and shall make available annually, to the public agency with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. Sec. 401 et seq.) covering employees governed by this chapter, or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the public agency with a copy of the financial reports.

3503. Representation of members; membership admission and dismissal regulation; right of personal appearance

Recognized employee organizations shall have the right to represent their members in their employment relations with public agencies. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the public agency.

3504. Scope of representation

The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

3504.5. Notice of proposed act relating to matters within scope of representation; meeting; emergencies

(a) Except in cases of emergency as provided in this section, the governing body of a public agency, and boards and commissions designated by law or by the governing body of a public agency, shall give reasonable written notice to each recognized

employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the governing body or the designated boards and commissions and shall give the recognized employee organization the opportunity to meet with the governing body or the boards and commissions.

(b) In cases of emergency when the governing body or the designated boards and commissions determine that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the governing body or the boards and commissions shall provide notice and opportunity to meet at the earliest practicable time following the adoption of the ordinance, rule, resolution, or regulation.

(c) The governing body of a public agency with a population in excess of 4,000,000, or the boards and commissions designated by the governing body of such a public agency shall not discriminate against employees by removing or disqualifying them from a health benefit plan, or otherwise restricting their ability to participate in a health benefit plan, on the basis that the employees have selected or supported a recognized employee organization. Nothing in this section shall be construed to prohibit the governing body of a public agency or the board or commission of a public agency and a recognized employee organization from agreeing to health benefit plan enrollment criteria or eligibility limitations.

3505. Conferences; meet and confer in good faith

The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations, as defined in subdivision (b) of Section 3501, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

“Meet and confer in good faith” means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. The process should include adequate time for the

resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.

3505.1. Memorandum of agreement

If a tentative agreement is reached by the authorized representatives of the public agency and a recognized employee organization or recognized employee organizations, the governing body shall vote to accept or reject the tentative agreement within 30 days of the date it is first considered at a duly noticed public meeting. A decision by the governing body to reject the tentative agreement shall not bar the filing of a charge of unfair practice for failure to meet and confer in good faith. If the governing body adopts the tentative agreement, the parties shall jointly prepare a written memorandum of understanding.

3505.2. Mediation; appointment of mediator; costs

If after a reasonable period of time, representatives of the public agency and the recognized employee organization fail to reach agreement, the public agency and the recognized employee organization or recognized employee organizations together may agree upon the appointment of a mediator mutually agreeable to the parties.

Costs of mediation shall be divided one-half to the public agency and one-half to the recognized employee organization or recognized employee organizations.

3505.3. Time off allowances to employee representatives

(a) Public agencies shall allow a reasonable number of public agency employee representatives of recognized employee organizations reasonable time off without loss of compensation or other benefits when they are participating in any one of the following activities:

(1) Formally meeting and conferring with representatives of the public agency on matters within the scope of representation.

(2) Testifying or appearing as the designated representative of the employee organization in conferences, hearings, or other proceedings before the board, or an agent thereof, in matters relating to a charge filed by the employee organization against the public agency or by the public agency against the employee organization.

(3) Testifying or appearing as the designated representative of the employee organization in matters before a personnel or merit commission.

(b) The employee organization being represented shall provide reasonable notification to the employer requesting a leave of absence without loss of compensation pursuant to subdivision (a).

(c) For the purposes of this section, “designated representative” means an officer of the employee organization or a member serving in proxy of the employee organization.

3505.4. Unable to effect settlement within 30 days of appointment; request for submission to factfinding panel; members; chairperson; powers; criteria for findings and recommendations

(a) The employee organization may request that the parties’ differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties’ agreement to mediate or a mediation process required by a public agency’s local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties’ differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in

their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

3505.5 Dispute not settled within 30 days after appointment of factfinding panel or upon agreement by parties; panel to make advisory findings of fact and recommended terms of settlement; costs; exemptions

(a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

3505.7. Impasse; implementation of last, best, and final offer

After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

3505.8. Arbitration agreement contained in memorandum of understanding; enforceability

An arbitration agreement contained in a memorandum of understanding entered into under this chapter shall be enforceable in an action brought pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. An assertion that the arbitration claim is untimely or otherwise barred because the party seeking arbitration has failed to satisfy the procedural prerequisites to arbitration shall not be a basis for refusing to submit the dispute to arbitration. All procedural defenses shall be presented to the arbitrator for resolution. A court shall not refuse to order arbitration because a party to the memorandum of understanding contends that the conduct in question arguably constitutes an unfair practice subject to the jurisdiction of the board. If a party to a memorandum of understanding files an unfair practice charge based on such conduct, the board shall place the charge in abeyance if the dispute is subject to final and binding arbitration pursuant to the memorandum of understanding, and shall dismiss the charge at the conclusion of the arbitration process unless the charging party demonstrates that the settlement or arbitration award is repugnant to the purposes of this chapter.

3506. Discrimination prohibited

Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502.

3506.5. Discrimination prohibited; denial of rights; refusal to negotiate in good faith; domination or interference with formation of employee organization; refusal to participate

A public agency shall not do any of the following:

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
- (b) Deny to employee organizations the rights guaranteed to them by this chapter.
- (c) Refuse or fail to meet and negotiate in good faith with a recognized employee organization. For purposes of this subdivision, knowingly providing a recognized employee organization with inaccurate information regarding the financial resources of the public employer, whether or not in response to a request for information, constitutes a refusal or failure to meet and negotiate in good faith.
- (d) Dominate or interfere with the formation or administration of any employee organization, contribute financial or other support to any employee organization, or in any way encourage employees to join any organization in preference to another.
- (e) Refuse to participate in good faith in an applicable impasse procedure.

3507. Rules and regulations

(a) A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations under this chapter. The rules and regulations may include provisions for all of the following:

- (1) Verifying that an organization does in fact represent employees of the public agency.
- (2) Verifying the official status of employee organization officers and representatives.
- (3) Recognition of employee organizations.

(4) Exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the agency or an appropriate unit thereof, subject to the right of an employee to represent himself or herself as provided in Section 3502.

(5) Additional procedures for the resolution of disputes involving wages, hours and other terms and conditions of employment.

(6) Access of employee organization officers and representatives to work locations.

(7) Use of official bulletin boards and other means of communication by employee organizations.

(8) Furnishing nonconfidential information pertaining to employment relations to employee organizations.

(9) Any other matters that are necessary to carry out the purposes of this chapter.

(b) Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of recognition.

(c) No public agency shall unreasonably withhold recognition of employee organizations.

(d) Employees and employee organizations shall be able to challenge a rule or regulation of a public agency as a violation of this chapter. This subdivision shall not be construed to restrict or expand the board's jurisdiction or authority as set forth in subdivisions (a) to (c), inclusive, of Section 3509.

3507.1. Unit determinations and representation elections; grant by public agency of exclusive or majority recognition to employee organization based on signed petition, authorization cards or union membership cards; neutral third-party determination

(a) Unit determinations and representation elections shall be determined and processed in accordance with rules adopted by a public agency in accordance with this chapter. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required.

(b) Notwithstanding subdivision (a) and rules adopted by a public agency pursuant to Section 3507, a bargaining unit in effect as of the effective date of this section shall continue in effect unless changed under the rules adopted by a public agency pursuant to Section 3507.

(c) A public agency shall grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the representation, unless another labor organization has previously been lawfully recognized as exclusive or majority representative of all or part of the same unit. Exclusive or majority representation shall be determined by a neutral third party selected by the public agency and the employee organization who shall review the signed petition, authorization cards, or union membership cards to verify the exclusive or majority status of the employee organization. In the event the public agency and the employee organization cannot agree on a neutral third party, the California State Mediation and Conciliation Service shall be the neutral third party and shall verify the exclusive or majority status of the employee organization. In the event that the neutral third party determines, based on a signed petition, authorization cards, or union membership cards, that a second labor organization has the support of at least 30 percent of the employees in the unit in which recognition is sought, the neutral third party shall order an election to establish which labor organization, if any, has majority status.

3507.3. Professional employees; representation; submission of dispute to division of conciliation

Professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of those professional employees. In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the California State Mediation and Conciliation Service for mediation or for recommendation for resolving the dispute.

“Professional employees,” for the purposes of this section, means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and the various types of physical, chemical, and biological scientists.

3507.5. Designation of management and confidential employees of public agency

In addition to those rules and regulations a public agency may adopt pursuant to and in the same manner as in Section 3507, any such agency may adopt reasonable rules and regulations providing for designation of the management and confidential employees of the public agency and restricting such employees from representing any employee organization, which represents other employees of the public agency, on matters within the scope of representation. Except as specifically provided otherwise in this chapter, this section does not otherwise limit the right of employees to be members of and to hold office in an employee organization.

3508. Law enforcement positions; exclusion from employee organizations; classification of positions in specified counties

(a) The governing body of a public agency may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws or local ordinances, and may by resolution or ordinance adopted after a public hearing, limit or prohibit the right of employees in these positions or classes of positions to form, join, or participate in employee organizations where it is in the public interest to do so. However, the governing body may not prohibit the right of its employees who are full-time “peace officers,” as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, to join or participate in employee organizations which are composed solely of those peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession, and which are not subordinate to any other organization.

(b) (1) This subdivision shall apply only to a county of the seventh class.

(2) For the purposes of this section, no distinction shall be made between a position designated as a peace officer position by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code at the time of the enactment of the 1971 amendments to this section, and a welfare fraud investigator or inspector position designated as a peace officer position by any amendment to that Chapter 4.5 at any time after the enactment of the 1971 amendments to this section.

(3) It is the intent of this subdivision to overrule San Bernardino County Sheriff’s Etc. Assn. v. Board of Supervisors (1992) 7 Cal.App.4th 602, 611, with respect to San

Bernardino County designating a welfare fraud investigator or inspector as a peace officer under this section.

(c) (1) This subdivision shall apply only to a county of the seventh class and shall not become operative until it is approved by the county board of supervisors by ordinance or resolution.

(2) For the purposes of this section, no distinction shall be made between a position designated as a peace officer position by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code at the time of the enactment of the 1971 amendments to this section, and a probation corrections officer position designated as a peace officer position by any amendment to that Chapter 4.5 at any time after the enactment of the 1971 amendments to this section.

(3) It is the intent of this subdivision to overrule San Bernardino County Sheriff's Etc. Assn. v. Board of Supervisors (1992) 7 Cal.App.4th 602, 611, to the extent that it holds that this section prohibits the County of San Bernardino from designating the classifications of Probation Corrections Officers and Supervising Probation Corrections Officers as peace officers. Those officers shall not be designated as peace officers for purposes of this section unless that action is approved by the county board of supervisors by ordinance or resolution.

(4) Upon approval by the Board of Supervisors of San Bernardino County, this subdivision shall apply to petitions filed in May 2001 by Probation Corrections Officers and Supervising Probation Corrections Officers.

(d) The right of employees to form, join and participate in the activities of employee organizations shall not be restricted by a public agency on any grounds other than those set forth in this section.

3508.1 Police employees; investigation of misconduct allegations and notification of any proposed disciplinary actions; limitations period; exceptions

For the purposes of this section, the term "police employee" includes the civilian employees of the police department of any city. Police employee does not include any public safety officer within the meaning of Section 3301.

(a) With respect to any police employee, except as provided in this subdivision and subdivision (d), no punitive action, nor denial of promotion on grounds other than

merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 2002. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the police employee of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(2) If the police employee waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves more than one employee and requires a reasonable extension.

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable, the time during which the person is incapacitated or unavailable shall toll the one-year period.

(6) If the investigation involves a matter in civil litigation in which the police employee is named as a party defendant, the one-year time period shall be tolled while the civil action is pending.

(7) If the investigation involves a matter in criminal litigation in which the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(8) If the investigation involves an allegation of workers' compensation fraud on the part of the police employee.

(b) When a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.

(c) If, after investigation and predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the police employee in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the police employee is unavailable for discipline.

(d) Notwithstanding the one-year time period specified in subdivision (a), an investigation may be reopened against a police employee if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exists:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the police employee's predisciplinary response or procedure.

3508.5. Right to authorize dues deductions; effect of chapter

(a) Nothing in this chapter shall affect the right of a public employee to authorize a dues or service fees deduction from his or her salary or wages pursuant to Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.

(b) A public employer shall deduct the payment of dues or service fees to a recognized employee organization as required by an agency shop arrangement between the recognized employee organization and the public employer.

(c) Agency fee obligations, including, but not limited to, dues or agency fee deductions on behalf of a recognized employee organization, shall continue in effect as long as the employee organization is the recognized bargaining representative, notwithstanding the expiration of any agreement between the public employer and the recognized employee organization.

3509. Board; powers and duties; unfair practices; rules; jurisdiction over employee organization actions

(a) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a public agency has no rule.

(b) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 or 3507.5 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter.

(c) The board shall enforce and apply rules adopted by a public agency concerning unit determinations, representation, recognition, and elections.

(d) Notwithstanding subdivisions (a) to (c), inclusive, the employee relations commissions established by, and in effect for, the County of Los Angeles and the City of Los Angeles pursuant to Section 3507 shall have the power and responsibility to take actions on recognition, unit determinations, elections, and all unfair practices, and to issue determinations and orders as the employee relations commissions deem necessary, consistent with and pursuant to the policies of this chapter.

(e) Notwithstanding subdivisions (a) to (c), inclusive, consistent with, and pursuant to, the provisions of Sections 3500 and 3505.4, superior courts shall have exclusive jurisdiction over actions involving interest arbitration, as governed by Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, when the action involves an employee organization that represents firefighters, as defined in Section 3251.

(f) This section shall not apply to employees designated as management employees under Section 3507.5.

(g) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a public agency if that rule or regulation is itself in violation of this chapter. This subdivision shall not be construed to restrict or expand the board's jurisdiction or authority as set forth in subdivisions (a) to (c), inclusive.

3509.3. Appeal of administrative law judge decision regarding recognition or certification of employee organization; final order of board

Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

3509.5. Petition for writ of extraordinary relief from final decision or order of board in unfair practices cases; jurisdiction; time for filing; enforcement of final decisions or orders

(a) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, and any party to a final decision or order of the board in a unit determination, representation, recognition, or election matter that is not brought as an unfair practice case, may petition for a writ of extraordinary relief from that decision or order. A board order directing an election may not be stayed pending judicial review.

(b) A petition for a writ of extraordinary relief shall be filed in the district court of appeal having jurisdiction over the county where the events giving rise to the decision or order occurred. The petition shall be filed within 30 days from the date of the issuance of the board's final decision or order, or order denying reconsideration, as applicable. Upon the filing of the petition, the court shall cause notice to be served upon the board and thereafter shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless that time is extended by the court for good cause shown. The court shall have jurisdiction to grant any temporary relief or restraining order it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the decision or order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered

as a whole, shall be conclusive. Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded by this section, apply to proceedings pursuant to this section.

(c) If the time to petition for extraordinary relief from a board decision or order has expired, the board may seek enforcement of any final decision or order in a district court of appeal or superior court having jurisdiction over the county where the events giving rise to the decision or order occurred. The board shall respond within 10 days to any inquiry from a party to the action as to why the board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the board's final decision or order, the board shall seek enforcement of the final decision or order upon the request of the party. The board shall file in the court the record of the proceeding, certified by the board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to the procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus or other proper process. The court may not review the merits of the order.

3510. Construction of chapter

(a) The provisions of this chapter shall be interpreted and applied by the board in a manner consistent with and in accordance with judicial interpretations of this chapter.

(b) The enactment of this chapter shall not be construed as making the provisions of Section 923 of the Labor Code applicable to public employees.

3511. Application of amendments made by 1999-2000 regular session legislation

The changes made to Sections 3501, 3507.1, and 3509 of the Government Code by legislation enacted during the 1999-2000 Regular Session of the Legislature shall not apply to persons who are peace officers as defined in Section 830.1 of the Penal Code.

CHAPTER 10.3
RALPH C. DILLS ACT
(STATE EMPLOYER-EMPLOYEE RELATIONS)

3512. Purpose of chapter

It is the purpose of this chapter to promote full communication between the state and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the state and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the State of California by providing a uniform basis for recognizing the right of state employees to join organizations of their own choosing and be represented by those organizations in their employment relations with the state. It is further the purpose of this chapter, in order to foster peaceful employer-employee relations, to allow state employees to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to permit the exclusive representative to receive financial support from those employees who receive the benefits of this representation.

Nothing in this chapter shall be construed to contravene the spirit or intent of the merit principle in state employment, nor to limit the entitlements of state civil service employees, including those designated as managerial and confidential, provided by Article VII of the California Constitution or by laws or rules enacted pursuant thereto.

3513. Definitions

As used in this chapter:

- (a) "Employee organization" means any organization that includes employees of the state and that has as one of its primary purposes representing these employees in their relations with the state.
- (b) "Recognized employee organization" means an employee organization that has been recognized by the state as the exclusive representative of the employees in an appropriate unit.
- (c) "State employee" means any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction, except managerial employees, confidential employees, supervisory employees, employees of the Department of Personnel

Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the office of the Inspector General, employees of the board, conciliators employed by the California State Mediation and Conciliation Service, employees of the Office of the State Chief Information Officer except as otherwise provided in Section 11546.5, and intermittent athletic inspectors who are employees of the State Athletic Commission.

(d) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(e) "Managerial employee" means any employee having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department.

(f) "Confidential employee" means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information contributing significantly to the development of management positions.

(g) "Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action, if, in connection with the foregoing, the exercise of this authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

(h) "Board" means the Public Employment Relations Board. The Educational Employment Relations Board established pursuant to Section 3541 shall be renamed the Public Employment Relations Board as provided in Section 3540. The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter.

(i) “Maintenance of membership” means that all employees who voluntarily are, or who voluntarily become, members of a recognized employee organization shall remain members of that employee organization in good standing for a period as agreed to by the parties pursuant to a memorandum of understanding, commencing with the effective date of the memorandum of understanding. A maintenance of membership provision shall not apply to any employee who within 30 days prior to the expiration of the memorandum of understanding withdraws from the employee organization by sending a signed withdrawal letter to the employee organization and a copy to the Controller’s office.

(j) “State employer,” or “employer,” for the purposes of bargaining or meeting and conferring in good faith, means the Governor or his or her designated representatives.

(k) “Fair share fee” means the fee deducted by the state employer from the salary or wages of a state employee in an appropriate unit who does not become a member of and financially support the recognized employee organization. The fair share fee shall be used to defray the costs incurred by the recognized employee organization in fulfilling its duty to represent the employees in their employment relations with the state, and shall not exceed the standard initiation fee, membership dues, and general assessments of the recognized employee organization.

3514. Interference with board members or agents; misdemeanor; fine

Any person who shall willfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars (\$1,000).

3514.5. Unfair practices; initial determination and remedy; jurisdiction of board; procedures

The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review a settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that the settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

(b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

(c) The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including, but not limited to, the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

3515. Employee organizational rights; maintenance of membership; fair share fee; self representation

Except as otherwise provided by the Legislature, state employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. State employees also shall have the right to refuse to join or participate in the activities of employee organizations, except that nothing shall preclude the parties from agreeing to a maintenance of membership provision, as defined in subdivision (i) of Section 3513, or a fair share fee provision, as defined in subdivision (k) of Section 3513, pursuant to a memorandum of understanding. In any event, state employees shall have the right to represent themselves individually in their employment relations with the state.

3515.5. Employee organizations; exclusive representation of members; restrictions on membership; dismissal

Employee organizations shall have the right to represent their members in their employment relations with the state, except that once an employee organization is recognized as the exclusive representative of an appropriate unit, the recognized employee organization is the only organization that may represent that unit in employment relations with the state. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the state.

3515.6. Employee organizations; deductions for dues, fees, membership benefit programs and assessments

All employee organizations shall have the right to have membership dues, initiation fees, membership benefit programs, and general assessments deducted pursuant to subdivision (a) of Section 1152 and Section 1153 until such time as an employee organization is recognized as the exclusive representative for employees in an appropriate unit, and then such deductions as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

3515.7. Maintenance of membership or fair share fee deduction

(a) Once an employee organization is recognized as the exclusive representative of an appropriate unit it may enter into an agreement with the state employer providing for organizational security in the form of maintenance of membership or fair share fee deduction.

(b) The state employer shall furnish the recognized employee organization with sufficient employment data to allow the organization to calculate membership fees and the appropriate fair share fees, and shall deduct the amount specified by the recognized employee organization from the salary or wages of every employee for the membership fee or the fair share fee. These fees shall be remitted monthly to the recognized employee organization along with an adequate itemized record of the deductions, including, if required by the recognized employee organization, machine readable data. Fair share fee deductions shall continue until the effective date of a successor agreement or implementation of the state's last, best, and final offer, whichever occurs first. The Controller shall retain, from the fair share fee deduction, an amount equal to

the cost of administering this section. The state employer shall not be liable in any action by a state employee seeking recovery of, or damages for, improper use or calculation of fair share fees.

(c) Notwithstanding subdivision (b), any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to financially support the recognized employee organization. That employee, in lieu of a membership fee or a fair share fee deduction, shall instruct the employer to deduct and pay sums equal to the fair share fee to a nonreligious, nonlabor organization, charitable fund approved by the California Victim Compensation and Government Claims Board for receipt of charitable contributions by payroll deductions.

(d) A fair share fee provision in a memorandum of understanding that is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for the vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; and (3) the vote may be taken at any time during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during the term. If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote in a manner that it shall prescribe. Notwithstanding this subdivision, the state employer and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on a fair share fee provision.

(e) Every recognized employee organization that has agreed to a fair share fee provision shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees in the unit, within 90 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or comparable officers. In the event of failure of compliance with this section, any employee in the unit may petition the board for an order compelling this compliance, or the board may issue a compliance order on its own motion.

(f) If an employee who holds conscientious objections pursuant to subdivision (c) requests individual representation in a grievance, arbitration, or administrative hearing from the recognized employee organization, the recognized employee organization is authorized to charge the employee for the reasonable cost of the representation.

(g) An employee who pays a fair share fee shall be entitled to fair and impartial representation by the recognized employee organization. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

3515.8. Return of part of fair share fee

Any state employee who pays a fair share fee shall have the right to demand and receive from the recognized employee organization, under procedures established by the recognized employee organization, a return of any part of that fee paid by him or her which represents the employee's additional pro rata share of expenditures by the recognized employee organization that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment, or applied towards the cost of any other benefits available only to members of the recognized employee organization. The pro rata share subject to refund shall not reflect, however, the costs of support of lobbying activities designed to foster policy goals and collective negotiations and contract administration, or to secure for the employees represented advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and conferring with the state employer. The board may compel the recognized employee organization to return that portion of a fair share fee which the board may determine to be subject to refund under the provisions of this section.

3516. Scope of representation; wages, hours and terms and conditions of employment

The scope of representation shall be limited to wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

3516.5. Notice of proposed law, rule, resolution or regulation; opportunity to meet and confer; emergencies

Except in cases of emergency as provided in this section, the employer shall give reasonable written notice to each recognized employee organization affected by any law, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the employer, and shall give such recognized employee organizations the opportunity to meet and confer with the administrative officials or their delegated representatives as may be properly designated by law.

In cases of emergency when the employer determines that a law, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the administrative officials or their delegated representatives as may be properly designated by law shall provide such notice and opportunity to meet and confer in good faith at the earliest practical time following the adoption of such law, rule, resolution, or regulation.

3517. Meet and confer in good faith

The Governor, or his representative as may be properly designated by law, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

“Meet and confer in good faith” means that the Governor or such representatives as the Governor may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the state of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses.

3517.5. Written memorandum of understanding; legislative determination

If agreement is reached between the Governor and the recognized employee organization, they shall jointly prepare a written memorandum of such understanding which shall be presented, when appropriate, to the Legislature for determination.

3517.6. Memorandum of understanding as controlling when in conflict with certain statutory provisions; legislative action required for funding and statutory changes

(a) (1) In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841,

19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22870, 22871, or 22890 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19576.1, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22870, 22871, or 22890 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(3) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19574, 19574.1, 19574.2, 19575, 19576.1, 19578, 19582, 19582.1, 19175.1, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871,

19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22870, 22871, or 22890 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(4) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 12 or 13. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18670, 18714, 19080.5, 19100, 19143, 19261, 19574, 19574.1, 19574.2, 19575, 19578, 19582, 19583, 19702, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22870, 22871, or 22890 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(b) In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding may not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited

above, those provisions of the memorandum of understanding may not become effective unless approved by the Legislature.

3517.61. State employees in State Bargaining Unit 6; application of memorandum of understanding

Notwithstanding Section 3517.6, for state employees in State Bargaining Unit 6, in any case where the provisions of Section 70031 of the Education Code, subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22870, 22871, or 22890 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action. In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding may not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding may not become effective unless approved by the Legislature.

3517.63. Side letters, appendices, or other addendum; additional expenditures; submission to Joint Legislative Budget Committee; ratification determination; express identification of specified addendum

(a) Any side letter, appendix, or other addendum to a properly ratified memorandum of understanding that requires the expenditure of two hundred fifty thousand dollars (\$250,000) or more related to salary and benefits and that is not already contained in the original memorandum of understanding or the Budget Act, shall be provided by the Department of Human Resources to the Joint Legislative Budget Committee. The Joint Legislative Budget Committee shall determine within 30 days after receiving the side letter, appendix, or other addendum if it presents substantial additions that are not reasonably within the parameters of the original memorandum of understanding and thereby requires legislative action to ratify the side letter, appendix, or other addendum.

(b) A side letter, appendix, or other addendum to a properly ratified memorandum of understanding that does not require the expenditure of funds shall be expressly identified by the Department of Human Resources if that side letter, appendix, or other addendum is to be incorporated in a subsequent memorandum of understanding submitted to the Legislature for approval.

3517.7. Memorandum of understanding; reopening negotiations upon legislature's failure to fund

If the Legislature does not approve or fully fund any provision of the memorandum of understanding which requires the expenditure of funds, either party may reopen negotiations on all or part of the memorandum of understanding.

Nothing herein shall prevent the parties from agreeing and effecting those provisions of the memorandum of understanding which have received legislative approval or those provisions which do not require legislative action.

3517.8. Expiration of memoranda of understanding; continued effect

(a) If a memorandum of understanding has expired, and the Governor and the recognized employee organization have not agreed to a new memorandum of understanding and have not reached an impasse in negotiations, subject to subdivision (b), the parties to the agreement shall continue to give effect to the provisions of the expired memorandum of understanding, including, but not limited to, all provisions that supersede existing law, any arbitration provisions, any no strike provisions, any

agreements regarding matters covered in the Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), and any provisions covering fair share fee deduction consistent with Section 3515.7.

(b) If the Governor and the recognized employee organization reach an impasse in negotiations for a new memorandum of understanding, the state employer may implement any or all of its last, best, and final offer. Any proposal in the state employer's last, best, and final offer that, if implemented, would conflict with existing statutes or require the expenditure of funds shall be presented to the Legislature for approval and, if approved, shall be controlling without further legislative action, notwithstanding Sections 3517.5, 3517.6, and 3517.7. Implementation of the last, best, and final offer does not relieve the parties of the obligation to bargain in good faith and reach an agreement on a memorandum of understanding if circumstances change, and does not waive rights that the recognized employee organization has under this chapter.

3518. Appointment of mediator upon failure to reach agreement; costs

If after a reasonable period of time, the Governor and the recognized employee organization fail to reach agreement, the Governor and the recognized employee organization may agree upon the appointment of a mediator mutually agreeable to the parties, or either party may request the board to appoint a mediator. When both parties mutually agree upon a mediator, costs of mediation shall be divided one-half to the state and one-half to the recognized employee organization. If the board appoints the mediator, the costs of mediation shall be paid by the board.

3518.5. Time off for employees to meet and confer without loss of compensation or benefits

A reasonable number of employee representatives of recognized employee organizations shall be granted reasonable time off without loss of compensation or other benefits when formally meeting and conferring with representatives of the state on matters within the scope of representation.

This section shall apply only to state employees, as defined by subdivision (c) of Section 3513, and only for periods when a memorandum of understanding is not in effect.

3518.7. Managerial and confidential employees; prohibition from holding elective office in certain organizations

Managerial employees and confidential employees shall be prohibited from holding elective office in an employee organization which also represents “state employees,” as defined in subdivision (c) of Section 3513.

3519. Unlawful actions by state

It shall be unlawful for the state to do any of the following:

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, “employee” includes an applicant for employment or reemployment.
- (b) Deny to employee organizations rights guaranteed to them by this chapter.
- (c) Refuse or fail to meet and confer in good faith with a recognized employee organization.
- (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.
- (e) Refuse to participate in good faith in the mediation procedure set forth in Section 3518.

3519.5. Unlawful actions by employee organizations

It shall be unlawful for an employee organization to:

- (a) Cause or attempt to cause the state to violate Section 3519.
- (b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet and confer in good faith with a state agency employer of any of the employees of which it is the recognized employee organization.

(d) Refuse to participate in good faith in the mediation procedure set forth in Section 3518.

3520. Judicial review of unit determination; stay of order directing election; petition for writ of extraordinary relief; notice; jurisdiction; findings; enforcement of final decision or order

(a) Judicial review of a unit determination shall only be allowed: (1) when the board, in response to a petition from the state or an employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such decision or order.

(c) Such petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The provisions of Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure

relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the district where the unit determination or unfair practice case occurred. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce such order by writ of mandamus. The court shall not review the merits of the order.

3520.5. Exclusive recognition to employee organization; procedures

(a) The state shall grant exclusive recognition to employee organizations designated or selected pursuant to rules established by the board for employees of the state or an appropriate unit thereof, subject to the right of an employee to represent himself.

(b) The board shall establish reasonable procedures for petitions and for holding elections and determining appropriate units pursuant to subdivision (a).

(c) The board shall also establish procedures whereby recognition of employee organizations formally recognized as exclusive representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of such recognition.

3520.7. Employee organization and associations; registering; determining status; identifying official representatives

The state employer shall adopt reasonable rules and regulations for all of the following:

(a) Registering employee organizations, as defined by subdivision (c) of Section 1150, and bona fide associations, as defined by subdivision (d) of Section 1150.

(b) Determining the status of organizations and associations as employee organizations or bona fide associations.

(c) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

**3520.8. Appeal of administrative law judge decision regarding
recognition or certification of employee organization; final order
of board**

Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

3521. Appropriate unit; determination; criteria

(a) In determining an appropriate unit, the board shall be governed by the criteria in subdivision (b). However, the board shall not direct an election in a unit unless one or more of the employee organizations involved in the proceeding is seeking or agrees to an election in such a unit.

(b) In determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals; the history of employee representation in state government and in similar employment; the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements; and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account such factors as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the state government, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of state government and its employees to serve the public.

(4) The number of employees and classifications in a proposed unit and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employees or any proliferation of units among the employees of the employer.

(6) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a separate unit of representation based upon occupation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers.

(c) There shall be a presumption that professional employees and nonprofessional employees should not be included in the same unit. However, the presumption shall be rebuttable, depending upon what the evidence pertinent to the criteria set forth in subdivision (b) establishes.

3521.5. Professional employee

The term “professional employee” means (a) any employee engaged in work (1) predominately intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (2) involving the consistent exercise of discretion and judgment in its performance; (3) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (4) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee, who (1) has completed the courses of specialized intellectual instruction and study described in paragraph 4 of subdivision (a), and (2) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subdivision (a)..

3521.7. Enforcement of state laws; designation of positions or classes involved

The board may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws.

Employees so designated shall not be denied the right to be in a unit composed solely of such employees.

3522. Physicians; negotiation for preauthorized travel for continuing medical education

(a) Physicians in any state bargaining unit may negotiate under this chapter for preauthorized travel outside the state for continuing medical education.

(b) The execution of a memorandum of understanding entered into pursuant to subdivision (a) shall constitute the approvals required under Sections 11032 and 11033, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

3523. Public meeting; presentation of meet and confer proposals to public employer; notice; public record; emergencies

(a) All initial meet and confer proposals of recognized employee organizations shall be presented to the employer at a public meeting, and such proposals thereafter shall be a public record.

All initial meet and confer proposals or counterproposals of the employer shall be presented to the recognized employee organization at a public meeting, and such proposals or counterproposals thereafter shall be a public record.

(b) Except in cases of emergency as provided in subdivision (d), no meeting and conferring shall take place on any proposal subject to subdivision (a) until not less than seven consecutive days have elapsed to enable the public to become informed, and to publicly express itself regarding the proposals, as well as regarding other possible subjects of meeting and conferring and thereafter, the employer shall, in open meeting, hear public comment on all matters related to the meet and confer proposals.

(c) Forty-eight hours after any proposal which includes any substantive subject which has not first been presented as proposals for public reaction pursuant to this section is offered during any meeting and conferring session, such proposals and the position, if any, taken thereon by the representatives of the employer, shall be a public record.

(d) Subdivision (b) shall not apply when the employer determines that, due to an act of God, natural disaster, or other emergency or calamity affecting the state, and which is

beyond the control of the employer or recognized employee organization, it must meet and confer and take action upon such a proposal immediately and without sufficient time for the public to become informed and to publicly express itself. In such cases the results of such meeting and conferring shall be made public as soon as reasonably possible.

3523.5. Inapplicability of Labor Code § 923 to state employees

The enactment of this chapter shall not be construed as making the provisions of Section 923 of the Labor Code applicable to state employees.

3524. Short title

This chapter shall be known and may be cited as the Ralph C. Dills Act.

CHAPTER 10.5 EXCLUDED EMPLOYEES BILL OF RIGHTS

3525. Short title

This chapter shall be known, and may be cited, as the Bill of Rights for State Excluded Employees.

3526. Purpose

The purpose of this chapter is to inform state supervisory, managerial, confidential, and employees otherwise excepted from coverage under the Ralph C. Dills Act by subdivision (c) of Section 3513 of their rights and terms and conditions of employment, and to inspire dedicated service, to recognize their important and fundamental roles in the management of state government, and to promote harmonious personnel relations among those representing state management in the conduct of state affairs.

3527. Definitions

As used in this chapter:

(a) “Employee” means a civil service employee of the State of California. The “State of California” as used in this chapter includes those state agencies, boards, and commissions as may be designated by law that employ civil service employees, except the University of California, Hastings College of the Law, and the California State University.

(b) “Excluded employee,” means all managerial employees, as defined in subdivision (e) of Section 3513, all confidential employees, as defined in subdivision (f) of Section 3513, and all supervisory employees, as defined in subdivision (g) of Section 3513, and all civil service employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller’s office engaged in technical or analytical duties in support of the state’s personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the Public Employment Relations Board, conciliators employed by the California State Mediation and Conciliation Service, employees of the office of the State Chief Information Officer except as provided in Section 11546.5,

and intermittent athletic inspectors who are employees of the State Athletic Commission.

(c) “Supervisory employee organization” means an organization that represents members who are supervisory employees under subdivision (g) of Section 3513.

(d) “Excluded employee organization” means an organization that includes excluded employees of the state, as defined in subdivision (b), and that has as one of its primary purposes representing its members in employer-employee relations. Excluded employee organization includes supervisory employee organizations.

(e) “State employer” or “employer,” for purposes of meeting and conferring on matters relating to supervisory employer-employee relations, means the Governor or his or her designated representatives.

3528. Legislative findings and declarations

The Legislature hereby finds and declares that the rights and protections provided to excluded employees under this chapter constitute a matter of important concern. The Legislature further finds and declares that the efficient and effective administration of state programs depends upon the maintenance of high morale and the objective consideration of issues raised between excluded employees and their employer.

3529. Excluded and nonexcluded employees; holding office, participation in grievances, etc.; prohibitions

(a) Except for supervisory employees as defined in subdivision (g) of Section 3513, excluded employees shall not hold any office in an employee organization which also represents nonexcluded employees.

(b) Excluded employees shall not participate in the handling of grievances on behalf of nonexcluded employees. Nonexcluded employees shall not participate in the handling of grievances on behalf of excluded employees.

(c) Excluded employees shall not participate in meet and confer sessions on behalf of nonexcluded employees. Nonexcluded employees shall not participate in meet and confer sessions on behalf of supervisory employees.

(d) The prohibition in subdivisions (b) and (c) shall not apply to the paid staff of an excluded or supervisory employee organization.

(e) Excluded employees shall not vote on questions of ratification or rejection of memoranda of understanding reached on behalf of nonexcluded employees.

3530. Excluded employee organizations; right to represent members

Excluded employee organizations shall have the right to represent their excluded members in their employment relations, including grievances, with the State of California. Excluded employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of excluded employees from membership. This section shall not prohibit any excluded employee from appearing on his or her own behalf or through his or her chosen representative in his or her employment relations and grievances with the State of California.

3531. Supervisory employees; rights

Supervisory employees shall have the right to form, join, and participate in the activities of supervisory employee organizations of their own choosing for the purpose of representation on all matters of supervisory employer-employee relations, as set forth in Section 3532. Supervisory employees also shall have the right to refuse to join or participate in the activities of supervisory employee organizations and shall have the right to represent themselves individually in their employment relations with the public employer.

3532. Supervisory employees; scope of representation

The scope of representation for supervisory employees shall include all matters relating to employment conditions and supervisory employer-employee relations including wages, hours, and other terms and conditions of employment.

3533. Supervisory organizations representing supervisory employees; meeting and conferring with state; emergencies or other immediate operational necessities

Upon request, the state shall meet and confer with verified supervisory organizations representing supervisory employees on matters within the scope of representation. Prior to arriving at a determination of policy or course of action directly impacting supervisory employees, the state employer shall provide reasonable advance notice and provide the verified supervisory employee organizations an opportunity to meet and

confer with the state employer to discuss alternative means of achieving objectives. Advance notice may be written, oral, or electronic. "Meet and confer" shall mean that the state employer shall consider as fully as it deems reasonable, such presentations as are made by the verified supervisory employee organization on behalf of its supervisory members prior to arriving at a determination of policy or course of action. The final determination of policy or course of action shall be the sole responsibility of the state employer. When the state employer determines that, due to an emergency or other immediate operational necessity, a law, rule, resolution, or regulation must be adopted immediately without prior notice or meeting and conferring with excluded employee organizations, the state employer shall provide notice and opportunity to meet and confer at the earliest practical time following the adoption of the law, rule, resolution, or regulation.

3534. Meeting and conferring; reasonable time off

The state employer shall allow a reasonable number of supervisory public employee representatives of verified supervisory employee organizations reasonable time off without loss of compensation or other benefits when meeting and conferring with representatives of the state employer on matters within the scope of representation for supervisory employees.

3535. Administration of excluded employer-employee relations; rules and regulations; provisions

The Department of Human Resources may adopt rules and regulations for the administration of excluded employer-employee relations, including supervisory employer-employee relations, under these provisions. Such rules and regulations may include provisions for:

- (a) Verifying that an excluded employee organization does in fact represent excluded employees.
- (b) Verifying the official status of excluded employee organization officers and representatives.
- (c) Access of excluded employee organization officers and representatives to work locations.
- (d) Use of official bulletin boards and other means of communication by excluded employee organizations.

(e) Furnishing nonconfidential information pertaining to excluded employee relations to excluded employee organizations.

(f) Any other matters as are necessary to carry out the purposes of this chapter.

3536. Designation of management and confidential employees; rules and regulations; representation; restrictions

The state may adopt reasonable rules and regulations providing for designation of the management and confidential employees of the state and restricting these employees from representing any employee organization, which represents other employees of the state, on matters within the scope of representation. Except as specifically provided otherwise in this chapter, this section does not otherwise limit the right of excluded employees to be members of and to hold office in an excluded employee organization.

3537. Annual registration statement

Every excluded employee organization shall submit an annual registration statement on or before July 1 of each calendar year to the Department of Human Resources. The registration statement shall, at a minimum, list the name of the organization, its affiliations, headquarters, and other business addresses, its principal business telephone number, a list of principal officers and representatives, and a copy of its organization bylaws.

3538. Supervisory employees; exercise of rights; interference with, intimidation, restraint, etc.

The state employer and excluded employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against supervisory employees because of their exercise of their rights under this article.

3539. Applicability of § 923 of Labor Code

The enactment of this chapter shall not make Section 923 of the Labor Code applicable to state employees.

3539.5. Benefits for state officers and employees excluded from Ralph C. Dills Act; regulations

(a) The Department of Human Resources may adopt or amend regulations to implement employee benefits for those state officers and employees excluded from, or not otherwise subject to, the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512)).

(b) These regulations shall not be subject to the review and approval of the Office of Administrative Law pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). These regulations shall become effective immediately upon filing with the Secretary of State.

CHAPTER 10.7
MEETING AND NEGOTIATING IN PUBLIC EDUCATIONAL
EMPLOYMENT

ARTICLE 1
GENERAL PROVISIONS

3540. Purpose of chapter

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy. This chapter shall not supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

It is the further intention of the Legislature that this chapter shall not restrict, limit, or prohibit the full exercise of the functions of any academic senate or faculty council established by a school district in a community college to represent the faculty in making recommendations to the administration and governing board of the school district with respect to district policies on academic and professional matters, so long as the exercise of the functions does not conflict with lawful collective agreements.

It is the further intention of the Legislature that any legislation enacted by the Legislature governing employer-employee relations of other public employees shall be incorporated into this chapter to the extent possible. The Legislature also finds and declares that it is an advantageous and desirable state policy to expand the jurisdiction of the board created pursuant to this chapter to cover other public employers and their employees, in the event that this legislation is enacted, and if this policy is carried out, the name of the Educational Employment Relations Board shall be changed to the "Public Employment Relations Board."

3540.1. Definitions

As used in this chapter:

- (a) “Board” means the Public Employment Relations Board created pursuant to Section 3541.
- (b) “Certified organization” or “certified employee organization” means an organization that has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).
- (c) “Confidential employee” means an employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.
- (d) “Employee organization” means an organization that includes employees of a public school employer and that has as one of its primary purposes representing those employees in their relations with that public school employer. “Employee organization” shall also include any person of the organization authorized to act on its behalf.
- (e) “Exclusive representative” means the employee organization recognized or certified as the exclusive negotiating representative of public school employees, as “public school employee” is defined in subdivision (j), in an appropriate unit of a public school employer.
- (f) “Impasse” means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.
- (g) “Management employee” means an employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.
- (h) “Meeting and negotiating” means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to

reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, is not subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) “Organizational security” is within the scope of representation, and means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, an arrangement shall not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) “Public school employee” or “employee” means a person employed by a public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) “Public school employer” or “employer” means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code, an auxiliary organization established pursuant to Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of Division 7 of Title 3 of the Education Code, except an auxiliary organization solely formed as or operating a student body association or student union, or a joint powers agency, except a joint powers agency established solely to provide services pursuant to Section 990.8, if all the following apply to the joint powers agency:

(1) It is created as an agency or entity that is separate from the parties to the joint powers agreement pursuant to Section 6503.5.

(2) It has its own employees separate from employees of the parties to the joint powers agreement.

(3) Any of the following are true:

(A) It provides educational services primarily performed by a school district, county board of education, or county superintendent of schools.

(B) A school district, county board of education, or county superintendent of schools is designated in the joint powers agreement pursuant to Section 6509.

(C) It is comprised solely of educational agencies.

(l) “Recognized organization” or “recognized employee organization” means an employee organization that has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) “Supervisory employee” means an employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend that action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

3540.2. Qualified or negative certifications; proposed agreements; review process; financial impact; review and comment by Superintendent of Public Instruction

(a) A school district that has a qualified or negative certification pursuant to Section 42131 of the Education Code shall allow the county office of education in which the school district is located at least 10 working days to review and comment on any proposed agreement made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The school district shall provide the county superintendent of schools with all information relevant to yield an understanding of the financial impact of that agreement.

(b) The Superintendent shall develop a format for use by the appropriate parties in generating the financial information required pursuant to subdivision (a).

(c) The county superintendent of schools shall notify the school district, the county board of education, the district superintendent, the governing board of the school district, and each parent and teacher organization of the district within those 10 days if, in his or her opinion, the agreement reviewed pursuant to subdivision (a) would endanger the fiscal well-being of the school district.

(d) A school district shall provide the county superintendent of schools, upon request, with all information relevant to provide an understanding of the financial impact of any final collective bargaining agreement reached pursuant to Section 3543.2.

(e) A county office of education, or a school district for which the county board of education serves as the governing board, that has a qualified or negative certification pursuant to Section 1240 of the Education Code shall allow the Superintendent at least 10 working days to review and comment on any proposed agreement or contract made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The county superintendent of schools shall provide the Superintendent with all information relevant to yield an understanding of the financial impact of that agreement or contract. The Superintendent shall notify the county superintendent of schools, and the county board of education within those 10 days if, in his or her opinion, the proposed agreement or contract would endanger the fiscal well-being of the county office.

ARTICLE 2 ADMINISTRATION

3541. Public employment relations board

(a) There is in state government the Public Employment Relations Board which shall be independent of any state agency and shall consist of five members. The members of the board shall be appointed by the Governor by and with the advice and consent of the Senate. One of the original members shall be chosen for a term of one year, one for a term of three years, and one for a term of five years. The first term for the two new members of the board resulting from the expansion of the board to five members shall be reduced by the Governor as necessary so that the term of only one member of the board shall expire in any given year. Thereafter, terms shall be for a period of five years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds. Members of the board shall

be eligible for reappointment. The Governor shall select one member to serve as chairperson. A member of the board may be removed by the Governor upon notice and hearing for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the commission, and three members of the board shall at all times constitute a quorum.

(c) The board may delegate its powers to any group of three or more board members. Nothing shall preclude any board member from participating in any case pending before the board.

(d) Members of the board shall hold no other public office in the state, and shall not receive any other compensation for services rendered.

(e) Each member of the board shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2. In addition to his or her salary, each member of the board shall be reimbursed for all actual and necessary expenses incurred by him or her in the performance of his or her duties, subject to the rules of the Department of Human Resources relative to the payment of these expenses to state officers generally.

(f) The board shall appoint an executive director who shall be the chief administrative officer. The executive director shall appoint other persons that may, from time to time, be deemed necessary for the performance of the board's administrative functions, prescribe their duties, fix their compensation, and provide for reimbursement of their expenses in the amounts made available therefor by appropriation. The executive director shall be a person familiar with employer-employee relations. The executive director shall be subject to removal at the pleasure of the board. The Governor shall appoint a general counsel, upon the recommendation of the board, to assist the board in the performance of its functions under this chapter. The general counsel shall serve at the pleasure of the board.

(g) The executive director and general counsel serving the board on December 31, 1977, shall become employees of the Public Employment Relations Board and shall continue to serve at the discretion of the board. A person so employed may, independently of the Attorney General, represent the board in any litigation or other matter pending in a court of law to which the board is a party or in which it is otherwise interested.

(h) The Governor shall appoint one legal adviser for each member of the board upon the recommendation of that board member. Each appointee shall serve at the pleasure of the recommending board member and shall receive a salary as shall be fixed by the board with the approval of the Department of Human Resources.

(i) Attorneys serving the board on May 19, 1978, shall not be appointed as legal advisers to board members pursuant to subdivision (h) until the time that they have attained permanent civil service status.

(j) Notwithstanding subdivision (a), the member of the board appointed by the Governor for the term beginning on January 1, 1991, shall not be subject to the advice and consent of the Senate.

3541.3. Powers and Duties of the Board

The board shall have all of the following powers and duties:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections that shall be conducted by means of secret ballot elections, and certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) Within its discretion, to conduct studies relating to employer-employee relations, including the collection, analysis, and making available of data relating to wages, benefits, and employment practices in public and private employment, and, when it appears necessary in its judgment to the accomplishment of the purposes of this chapter, recommend legislation. The board shall report to the Legislature by October 15 of each year on its activities during the immediately preceding fiscal year. The board may enter into contracts to develop and maintain research and training programs designed to assist public employers and employee organizations in the discharge of their mutual responsibilities under this chapter.

(g) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(h) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 does not apply to a hearing by the board under this chapter, except a hearing to determine an unfair practice charge.

(i) To investigate unfair practice charges or alleged violations of this chapter, and take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.

(j) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings, or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(k) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it, and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(l) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(m) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(n) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

3541.35. Appeal of administrative law judge decision regarding recognition or certification of employee organization; final order of board

Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization as described in subdivision (l) of Section 3541.3 is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

3541.4. Interference with board in performance of duties; misdemeanor

Any person who shall willfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars (\$1,000).

3541.5. Unfair practice; jurisdiction; procedures for investigation, hearing and decision

The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following:

(1) Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

(2) Issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The

board shall have discretionary jurisdiction to review the settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that the settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits. Otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

(b) The board shall not have the authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of any agreement that would not also constitute an unfair practice under this chapter.

(c) The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

ARTICLE 3 JUDICIAL REVIEW

3542. Right to judicial review; petition for writ of extraordinary relief; notice; jurisdiction; record; findings; enforcement of final decision or order

(a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue

a complaint in such a case, may petition for a writ of extraordinary relief from such decision or order.

(c) Such petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, are conclusive. The provisions of Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the district where the unit determination or unfair practice case occurred. The board shall respond within 10 days to any inquiry from a party to the action as to why the board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the board's final decision or order, the board shall seek enforcement of the final decision or order upon the request of the party. The board shall file in the court the record of the proceeding, certified by the board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce such order by writ of mandamus. The court shall not review the merits of the order.

ARTICLE 4
RIGHTS, OBLIGATIONS, PROHIBITIONS
AND UNFAIR PRACTICES

3543. Rights of public school employees

(a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, an employee in that unit shall not meet and negotiate with the public school employer. If the exclusive representative of a unit provides notification, as specified by subdivision (a) of Section 3546, public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.

(b) An employee may at any time present grievances to his or her employer, and have those grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect, provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

3543.1. Rights of employee organizations

(a) Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

(b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

(c) A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances.

(d) All employee organizations shall have the right to have membership dues deducted pursuant to Sections 45060 and 45168 of the Education Code, until an employee organization is recognized as the exclusive representative for any of the employees in an appropriate unit, and then the deduction as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

3543.2. Scope of representation

(a) (1) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code, and alternative compensation or benefits for employees adversely affected by pension limitations pursuant to former Section 22316 of the Education Code, as that section read on

December 31, 1999, to the extent deemed reasonable and without violating the intent and purposes of Section 415 of the Internal Revenue Code.

(2) A public school employer shall give reasonable written notice to the exclusive representative of the public school employer's intent to make any change to matters within the scope of representation of the employees represented by the exclusive representative for purposes of providing the exclusive representative a reasonable amount of time to negotiate with the public school employer regarding the proposed changes.

(3) The exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent those matters are within the discretion of the public school employer under the law.

(4) All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, except that this section does not limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

(b) Notwithstanding Section 44944 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including a suspension of pay for up to 15 days, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, Section 44944 of the Education Code shall apply.

(c) Notwithstanding Section 44955 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding procedures and criteria for the layoff of certificated employees for lack of funds. If the public school employer and the exclusive representative do not reach mutual agreement, Section 44955 of the Education Code shall apply.

(d) Notwithstanding Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding the payment of additional compensation based upon criteria other than years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, Section 45028 of the Education Code shall apply.

(e) Pursuant to Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon the request of either party, meet and negotiate a salary schedule based on criteria other than a uniform allowance for years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, the provisions of Section 45028 of the Education Code requiring a salary schedule based upon a uniform allowance for years of training and years of experience shall apply. A salary schedule established pursuant to this subdivision shall not result in the reduction of the salary of a teacher.

3543.3. Negotiations

A public school employer or such representatives as it may designate who may, but need not be, subject to either certification requirements or requirements for classified employees set forth in the Education Code, shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation.

3543.4. Management positions; confidential positions; representation

A person serving in a management position, senior management position, or a confidential position may not be represented by an exclusive representative. Any person serving in such a position may represent himself or herself individually or by an employee organization whose membership is composed entirely of employees designated as holding those positions, in his or her employment relationship with the public school employer, but, in no case, shall such an organization meet and negotiate with the public school employer. A representative may not be permitted by a public school employer to meet and negotiate on any benefit or compensation paid to persons serving in a management position, senior management position or a confidential position.

3543.5. Interference with employees' rights prohibited

It is unlawful for a public school employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative. Knowingly providing an exclusive representative with inaccurate information, whether or not in response to a request for information, regarding the financial resources of the public school employer constitutes a refusal or failure to meet and negotiate in good faith.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

3543.6. Unlawful acts of employee organization

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause a public school employer to violate Section 3543.5.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

3543.7. Duty to meet and negotiate in good faith; time

The duty to meet and negotiate in good faith requires the parties to begin negotiations prior to the adoption of the final budget for the ensuing year sufficiently in advance of such adoption date so that there is adequate time for agreement to be reached, or for the resolution of an impasse.

3543.8. Actions and proceedings; standing; application of section

Any employee organization shall have standing to sue in any action or proceeding heretofore or hereafter instituted by it as representative and on behalf of one or more of its members. The provisions of this section are expressly intended to apply to actions or proceedings commenced prior to, but concluded or pending as of, as well as on and after, the effective date of this section.

ARTICLE 5
EMPLOYEE ORGANIZATIONS: REPRESENTATION, RECOGNITION,
CERTIFICATION, AND DECERTIFICATION

3544. Request for recognition; proof of majority support

(a) An employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and negotiating by filing a request with a public school employer alleging that a majority of the employees in an appropriate unit wish to be represented by such organization and asking the public school employer to recognize it as the exclusive representative. The request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall be based upon majority support on the basis of current dues deduction authorizations or other evidence such as notarized membership lists, or membership cards, or petitions designating the organization as the exclusive representative of the employees. Notice of any such request shall immediately be posted conspicuously on all employee bulletin boards in each facility of the public school employer in which members of the unit claimed to be appropriate are employed.

(b) The employee organization shall submit proof of majority support to the board. The information submitted to the board shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organization and the public school employer as to whether the proof of majority support is adequate.

3544.1. Grant of request for recognition; exceptions

The public school employer shall grant a request for recognition filed pursuant to Section 3544, unless any of the following apply:

(a) The public school employer doubts the appropriateness of a unit.

(b) Another employee organization either files with the public school employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. The claim shall be evidenced by current dues deductions authorizations or other evidence such as notarized membership lists, or membership cards, or petitions signed by employees in the unit indicating their desire to be represented by the organization. The evidence shall be submitted to the board, and shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organizations seeking recognition and to the public school employer as to the adequacy of the evidence. If the claim is evidenced by the support of at least 30 percent of the members of an appropriate unit, a question of representation exists and the board shall conduct a representation election pursuant to Section 3544.7, unless subdivision (c) or (d) of this section applies.

(c) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

(d) The public school employer has, within the previous 12 months, lawfully recognized another employee organization as the exclusive representative of any employees included in the unit described in the request for recognition.

3544.3. Petition requesting representation election; posting of notice of request; appearance on ballot; transmission of petition to board

If, by January 1 of any school year, no employee organization has made a claim of majority support in an appropriate unit pursuant to Section 3544, a majority of employees of an appropriate unit may submit to a public school employer a petition signed by at least a majority of the employees in the appropriate unit requesting a representation election. An employee may sign such a petition though not a member of any employee organization.

Upon the filing of such a petition, the public school employer shall immediately post a notice of such request upon all employee bulletin boards at each school or other facility in which members of the unit claimed to be appropriate are employed.

Any employee organization shall have the right to appear on the ballot if, within 15 workdays after the posting of such notice, it makes the showing of interest required by subdivision (b) of Section 3544.1.

Immediately upon expiration of the 15-workday period following the posting of the notice, the public school employer shall transmit to the board the petition and the names of all employee organizations that have the right to appear on the ballot.

3544.5. Petition requesting investigation, decision on selection of exclusive representative and to determine appropriateness of unit

A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by:

- (a) A public school employer alleging that it doubts the appropriateness of the claimed unit; or
- (b) An employee organization alleging that it has filed a request for recognition as an exclusive representative with a public school employer and that the request has been denied or has not been acted upon within 30 days after the filing of the request; or
- (c) An employee organization alleging that it has filed a competing claim of representation pursuant to subdivision (b) of Section 3544.1; or
- (d) An employee organization alleging that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative, provided that such petition is supported by evidence of support such as notarized membership lists, cards, or petitions from 30 percent of the employees in the negotiating unit indicating support for another organization or lack of support for the incumbent exclusive representative. Such evidence of support shall be submitted to the board, and shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organizations seeking recognition and to the public school employer as to the adequacy of the evidence of support.

3544.7. Investigations or hearings; petition questions; election; dismissal of petition

(a) Upon receipt of a petition filed pursuant to Section 3544.3 or 3544.5, the board shall conduct inquiries and investigations or hold any hearings it deems necessary in order to decide the questions raised by the petition. The determination of the board may be based upon the evidence adduced in the inquiries, investigations, or hearing.

However, if the board finds on the basis of the evidence that a question of representation exists, or a question of representation exists pursuant to subdivision (b) of Section 3544.1, it shall order that an election be conducted by secret ballot and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast. There shall be printed on each ballot the statement: “no representation.” No voter shall record more than one choice on his or her ballot. Any ballot upon which there is recorded more than one choice shall be void and shall not be counted for any purpose. If at any election no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted. The ballot for the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) An election may not be held and the petition shall be dismissed if either of the following exist:

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

(2) The public school employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition.

3544.9. Recognized or certified exclusive representative; duty

The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

ARTICLE 6 UNIT DETERMINATIONS

3545. Appropriateness of unit; basis

(a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

(b) In all cases:

(1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.

(2) Except as provided in subdivision (c), a negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

(3) Classified employees and certificated employees shall not be included in the same negotiating unit.

(c) In the case of a district which employs 20 or more supervisory peace officer employees, a negotiating unit of supervisory employees shall be appropriate if it includes any of the following:

(1) All supervisory nonpeace officer employees employed by the district and all supervisory peace officer employees employed by the district.

(2) All supervisory nonpeace officer employees employed by the district, exclusively.

(3) All supervisory peace officer employees employed by the district, exclusively.

A negotiating unit of supervisory employees shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

ARTICLE 7 ORGANIZATIONAL SECURITY

3546. Member of recognized employee organization or payment of fair share service fee; condition of employment

(a) Notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Agency fee payers shall have the right, pursuant to regulations adopted by the Public Employment Relations Board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d)(1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(e) The recognized employee organization shall indemnify and hold the public school employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the school district's compliance with this section. The recognized employee organization shall have the exclusive right to determine whether any such action or proceeding shall or shall not be compromised, resisted, defended, tried, or appealed. This indemnification and hold harmless duty shall not apply to actions related to compliance with this section brought by the exclusive representative of district employees against the public school employer.

(f) The employer of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in *Chicago Teachers Union v. Hudson* (1986) 89 L.Ed. 2d 232.

3546.3. Member of religious body whose teachings include objections to joining or supporting employee organizations; exception

Notwithstanding subdivision (i) of Section 3540.1, Section 3546, or any other provision of this chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or

financially support any employee organization as a condition of employment; except that such employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c)(3) of Title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate such funds, then to any such fund chosen by the employee. Either the employee organization or the public school employer may require that proof of such payments be made on an annual basis to the public school employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using such procedure.

3546.5. Record of financial transactions; financial report

Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, signed and certified as to accuracy by its president and treasurer, or corresponding principal officers. In the event of failure of compliance with this section, any employee within the organization may petition the board for an order compelling such compliance, or the board may issue such compliance order on its motion.

**ARTICLE 8
PUBLIC NOTICE**

3547. Proposals relating to representation; informing public; adoption of proposal; new subjects; regulations

(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become

informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

3547.5. Major provisions of agreement with exclusive representative

(a) Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.

(b) The superintendent of the school district and chief business official shall certify in writing that the costs incurred by the school district under the agreement can be met by the district during the term of the agreement. This certification shall be prepared in a format similar to that of the reports required pursuant to Sections 42130 and 42131 of the Education Code and shall itemize any budget revision necessary to meet the costs of the agreement in each year of its term.

(c) If a school district does not adopt all of the revisions to its budget needed in the current fiscal year to meet the costs of a collective bargaining agreement, the county superintendent of schools shall issue a qualified or negative certification for the district on the next interim report pursuant to Section 42131 of the Education Code.

ARTICLE 9 IMPASSE PROCEDURES

3548. Declaration of impasse; appointment of mediator; selection of procedure; costs

Either a public school employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the board without cost to the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure and in the event of such agreement, the board shall not appoint its own mediator, unless failure to do so would be inconsistent with the policies of this chapter. If the parties agree upon their own mediation procedure, the cost of the services of any appointed mediator, unless appointed by the board, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.

3548.1. Fact finding panel; request; selection of panel; chairperson

(a) If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The board shall, within five days after such selection, select a chairperson of the factfinding panel. The chairperson designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 3548.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

3548.2. Investigations and hearings by fact finding panel; access to records; considerations in arriving at findings

(a) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps as it may deem appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state, or any political subdivision or agency thereof, including any board of education, shall furnish the panel, upon its request, with all records, papers and information in their possession relating to any matter under investigation by or in issue before the panel.

(b) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the public school employer.
- (4) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.
- (5) The consumer price index for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.

(7) Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

3548.3. Findings of fact and recommendation of terms of settlement; submission; costs

(a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The public school employer shall make such findings and recommendations public within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses shall be borne by the board.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's resume on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of such interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public school employer and the exclusive representative. Any separately incurred costs for the panel member selected by each party, shall be borne by such party.

3548.4. Continuation of mediation efforts

Nothing in this article shall be construed to prohibit the mediator appointed pursuant to Section 3548 from continuing mediation efforts on the basis of the findings of fact and recommended terms of settlement made pursuant to Section 3548.3.

3548.5. Agreements; final and binding arbitration procedures

A public school employer and an exclusive representative who enter into a written agreement covering matters within the scope of representation may include in the agreement procedures for final and binding arbitration of such disputes as may arise involving the interpretation, application, or violation of the agreement.

3548.6. Agreements; final and binding arbitration pursuant to board rules

If the written agreement does not include procedures authorized by Section 3548.5, both parties to the agreement may agree to submit any disputes involving the interpretation, application, or violation of the agreement to final and binding arbitration pursuant to the rules of the board.

3548.7. Agreements; proceedings for failure to proceed to arbitration

Where a party to a written agreement is aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the procedures provided therefor in the agreement or pursuant to an agreement made pursuant to Section 3548.6, the aggrieved party may bring proceedings pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure for a court order directing that the arbitration proceed pursuant to the procedures provided therefor in such agreement or pursuant to Section 3548.6.

3548.8. Arbitration award to be final and binding; enforcement

An arbitration award made pursuant to Section 3548.5, 3548.6, or 3548.7 shall be final and binding upon the parties and may be enforced by a court pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

ARTICLE 10 MISCELLANEOUS

3549. Construction

The enactment of this chapter shall not be construed as making the provisions of Section 923 of the Labor Code applicable to public school employees and shall not be construed as prohibiting a public school employer from making the final decision with regard to all matters specified in Section 3543.2.

Nothing in this section shall cause any court or the board to hold invalid any negotiated agreement between public school employers and the exclusive representative entered into in accordance with the provisions of this chapter.

3549.1. Proceedings exempt from public meeting provisions

All the proceedings set forth in subdivisions (a) to (d), inclusive, are exempt from the provisions of Sections 35144 and 35145 of the Education Code, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2), and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), unless the parties mutually agree otherwise:

- (a) Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.
- (b) Any meeting of a mediator with either party or both parties to the meeting and negotiating process.
- (c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.
- (d) Any executive session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

3549.3. Severability

If any provisions of this chapter or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter or the application of

such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

CHAPTER 12
HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS

ARTICLE 1
GENERAL PROVISIONS

3560. Legislative findings and declarations

The Legislature hereby finds and declares that:

(a) The people of the State of California have a fundamental interest in the development of harmonious and cooperative labor relations between the public institutions of higher education and their employees.

(b) All other employees of the public school systems in the state have been granted the opportunity for collective bargaining through the adoption of Chapter 10.3 (commencing with Section 3512) and Chapter 10.7 (commencing with Section 3540), and it would be advantageous and desirable to expand the jurisdiction of the board created thereunder to cover the employees of the University of California, Hastings College of the Law, and the California State University. These institutions of higher education have their own organizational characteristics.

(c) The people of the State of California have established a system of higher education under the Constitution of the State of California with the intention of providing an academic community with full freedom of inquiry and insulation from political influence in the administration thereof. In so doing, the people have caused to be created the regents to govern the University of California, a board of directors to govern Hastings College of the Law, an affiliate of the University of California, and a board of trustees to govern the California State University.

(d) The people and the aforementioned higher education employers each have a fundamental interest in the preservation and promotion of the responsibilities granted by the people of the State of California. Harmonious relations between each higher education employer and its employees are necessary to that endeavor.

(e) It is the purpose of this chapter to provide the means by which relations between each higher education employer and its employees may assure that the responsibilities and authorities granted to the separate institutions under the Constitution and by statute are carried out in an atmosphere which permits the fullest participation by employees in the determination of conditions of employment which affect them. It is the intent of

this chapter to accomplish this purpose by providing a uniform basis for recognizing the right of the employees of these systems to full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of representation in their employment relationships with their employers and to select one of these organizations as their exclusive representative for the purpose of meeting and conferring.

3561. Purposes; full exercise of functions of faculty in shared governance mechanisms or practices

(a) It is the further purpose of this chapter to provide orderly and clearly defined procedures for meeting and conferring and the resolution of impasses, and to define and prohibit certain practices which are inimical to the public interest.

(b) The Legislature recognizes that joint decisionmaking and consultation between administration and faculty or academic employees is the long-accepted manner of governing institutions of higher learning and is essential to the performance of the educational missions of these institutions, and declares that it is the purpose of this chapter to both preserve and encourage that process. Nothing contained in this chapter shall be construed to restrict, limit, or prohibit the full exercise of the functions of the faculty in any shared governance mechanisms or practices, including the Academic Senate of the University of California and the divisions thereof, the Academic Senates of the California State University, and other faculty councils, with respect to policies on academic and professional matters affecting the California State University, the University of California, or Hastings College of the Law. The principle of peer review of appointment, promotion, retention, and tenure for academic employees shall be preserved.

(c) It is the policy of the State of California to encourage the pursuit of excellence in teaching, research, and learning through the free exchange of ideas among the faculty, students, and staff of the University of California, Hastings College of the Law, and the California State University. All parties subject to this chapter shall respect and endeavor to preserve academic freedom in the University of California, Hastings College of the Law, and the California State University.

3562. Definitions

As used in this chapter:

(a) “Arbitration” means a method of resolving a rights dispute under which the parties to a controversy must accept the award of a third party.

(b) “Board” means the Public Employment Relations Board established pursuant to Section 3513.

(c) “Certified organization” means an employee organization that has been certified by the board as the exclusive representative of the employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3573).

(d) “Confidential employee” means any employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of those management positions.

(e) “Employee” or “higher education employee” means any employee of the Regents of the University of California, the Directors of the Hastings College of the Law, or the Trustees of the California State University. However, managerial and confidential employees and employees whose principal place of employment is outside the State of California at a worksite with 100 or fewer employees shall be excluded from coverage under this chapter. The board may find student employees whose employment is contingent on their status as students are employees only if the services they provide are unrelated to their educational objectives, or that those educational objectives are subordinate to the services they perform and that coverage under this chapter would further the purposes of this chapter.

(f) (1) “Employee organization” means any organization of any kind in which higher education employees participate and that exists for the purpose, in whole or in part, of dealing with higher education employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of employees. An organization that represents one or more employees whose principal worksite is located outside the State of California is an employee organization only if it has filed with the board and with the employer a statement agreeing, in consideration of obtaining the benefits of status as an employee organization pursuant to this chapter, to submit to the jurisdiction of the board. The board shall promulgate the form of the statement.

(2) “Employee organization” shall also include any person that an employee organization authorizes to act on its behalf. An academic senate, or other similar academic bodies, or divisions thereof, shall not be considered employee organizations for the purposes of this chapter.

(g) “Employer” or “higher education employer” means the regents in the case of the University of California, the directors in the case of the Hastings College of the Law, and the trustees in the case of the California State University, including any person acting as an agent of an employer.

(h) “Employer representative” means any person or persons authorized to act on behalf of the employer.

(i) “Exclusive representative” means any recognized or certified employee organization or person it authorizes to act on its behalf.

(j) “Impasse” means that the parties have reached a point in meeting and conferring at which their differences in positions are such that further meetings would be futile.

(k) “Managerial employee” means any employee having significant responsibilities for formulating or administering policies and programs. No employee or group of employees shall be deemed to be managerial employees solely because the employee or group of employees participates in decisions with respect to courses, curriculum, personnel, and other matters of educational policy. A department chair or head of a similar academic unit or program who performs the foregoing duties primarily on behalf of the members of the academic unit or program shall not be deemed a managerial employee solely because of those duties.

(l) “Mediation” means the efforts of a third person, or persons, functioning as intermediaries, to assist the parties in reaching a voluntary resolution to an impasse.

(m) “Meet and confer” means the performance of the mutual obligation of the higher education employer and the exclusive representative of its employees to meet at reasonable times and to confer in good faith with respect to matters within the scope of representation and to endeavor to reach agreement on matters within the scope of representation. The process shall include adequate time for the resolution of impasses. If agreement is reached between representatives of the higher education employer and the exclusive representative, they shall jointly prepare a written memorandum of the understanding, which shall be presented to the higher education employer for

concurrence. However, these obligations shall not compel either party to agree to any proposal or require the making of a concession.

(n) “Person” means one or more individuals, organizations, associations, corporations, boards, committees, commissions, agencies, or their representatives.

(o) “Professional employee” means:

(1) Any employee engaged in work: (A) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (B) involving the consistent exercise of discretion and judgment in its performance; (C) of a character so that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (D) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

(2) Any employee who: (A) has completed the courses of specialized intellectual instruction and study described in subparagraph (D) of paragraph (1), and (B) is performing related work under the supervision of a professional person to qualify himself or herself to become a professional employee as defined in paragraph (1).

(p) “Recognized organization” means an employee organization that has been recognized by an employer as the exclusive representative of the employees in an appropriate unit pursuant to Article 5 (commencing with Section 3573).

(q) (1) For purposes of the University of California only, “scope of representation” means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include any of the following: (A) Consideration of the merits, necessity, or organization of any service, activity, or program established by law or resolution of the regents or the directors, except for the terms and conditions of employment of employees who may be affected thereby. (B) The amount of any fees that are not a term or condition of employment. (C) Admission requirements for students, conditions for the award of certificates and degrees to students, and the content and supervision of courses, curricula, and research programs, as those terms are intended by the standing orders of the regents or the directors. (D) Procedures and policies to be used for the appointment, promotion, and tenure of members of the academic senate, the procedures to be used for the evaluation of the

members of the academic senate, and the procedures for processing grievances of members of the academic senate. The exclusive representative of members of the academic senate shall have the right to consult and be consulted on matters excluded from the scope of representation pursuant to this subparagraph. If the academic senate determines that any matter in this subparagraph should be within the scope of representation, or if any matter in this subparagraph is withdrawn from the responsibility of the academic senate, the matter shall be within the scope of representation.

(2) All matters not within the scope of representation are reserved to the employer and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

(r) (1) For purposes of the California State University only, “scope of representation” means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include: (A) Consideration of the merits, necessity, or organization of any service, activity, or program established by statute or regulations adopted by the trustees, except for the terms and conditions of employment of employees who may be affected thereby. (B) The amount of any student fees that are not a term or condition of employment. (C) Admission requirements for students, conditions for the award of certificates and degrees to students, and the content and conduct of courses, curricula, and research programs. (D) Criteria and standards to be used for the appointment, promotion, evaluation, and tenure of academic employees, which shall be the joint responsibility of the academic senate and the trustees. The exclusive representative shall have the right to consult and be consulted on matters excluded from the scope of representation pursuant to this subparagraph. If the trustees withdraw any matter in this subparagraph from the responsibility of the academic senate, the matter shall be within the scope of representation. (E) The amount of rental rates for housing charged to California State University employees.

(2) All matters not within the scope of representation are reserved to the employer, and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

3562.1. California state university; establishment of flexible benefit plans; legislative approval of expenditures

The California State University may meet and confer with the employee organization selected as the exclusive representative of appropriate units at the university on the establishment of flexible benefit plans. Any agreement between the university and an employee organization which requires the expenditure of funds for a flexible benefit program is not subject to legislative approval if funds otherwise appropriated to the California State University for employee compensation are sufficient to finance the flexible benefit plan.

3562.2. Scope of representation defined

Notwithstanding subdivision (r) of Section 3562, for purposes of the California State University only, "scope of representation" also means any retirement benefits available to a state member under Part 3 (commencing with Section 20000) of Title 2.

**ARTICLE 2
ADMINISTRATION**

3563. Public Employment Relations Board; Rights, Powers, Duties and Responsibilities

This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all of the following rights, powers, duties and responsibilities:

- (a) To determine in disputed cases, or otherwise approve, appropriate units.
- (b) To determine in disputed cases whether a particular item is within or without the scope of representation.
- (c) To arrange for and supervise representation elections which shall be conducted by means of secret ballot elections, and to certify the results of the elections.
- (d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders.
- (e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(g) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction, except for those records, books, or papers confidential under statute. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 does not apply to a hearing by the board under this section, except a hearing to determine an unfair practice charge.

(h) To investigate unfair practice charges or alleged violations of this chapter, and to take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

(i) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(j) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(k) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(l) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(m) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

3563.1. Willful resistance, prevention, impedance or interference with member of board or its agent in performance of duties; misdemeanor; penalty

Any person who shall willfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars (\$1,000).

3563.2. Charge of unfair practice; initial determination; exclusive jurisdiction of board; procedures for investigation, hearing and decision

The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board.

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

(b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

3563.3. Order to cease and desist and to take affirmative action; power of board

The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including, but not limited to, the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.

**3563.5. Appeal of administrative law judge decision regarding
recognition or certification of employee organization; final order
of board**

Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization as described in subdivision (k) of Section 3563 is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

**ARTICLE 3
JUDICIAL REVIEW**

**3564. Unit determination; stay of order directing election; petition for
writ of extraordinary relief; notice; jurisdiction; record; findings;
enforcement of final decision or order**

(a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such decision or order.

(c) Such petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's

notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, are conclusive. The provisions of Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the district where the unit determination or unfair practice case occurred. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce such order by writ of mandamus. The court shall not review the merits of the order.

ARTICLE 4 RIGHTS, OBLIGATIONS, PROHIBITIONS, AND UNFAIR LABOR PRACTICES

**3565. Right to form, join and participate in employee organizations;
right to refuse**

Higher education employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations and for the purpose of meeting and conferring. Higher education employees shall also have the right to refuse to join employee organizations or to participate in the activities of these organizations subject to the organizational security provision permissible under this chapter.

**3566. Employee organizations and associations; registering;
determining status; identifying official representatives**

The Trustees of the California State University shall adopt reasonable rules and regulations for all of the following:

(a) Registering employee organizations, as defined in Section 3562, and bona fide associations, as defined in Section 1150.

(b) Determining the status of organizations and associations as employee organizations or bona fide associations.

(c) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

3567. Grievances; presentation individually or through representative; adjustment; resolution

Any employee or group of employees may at any time, either individually or through a representative of their own choosing, present grievances to the employer and have such grievances adjusted, without the intervention of the exclusive representative; provided, the adjustment is reached prior to arbitration pursuant to Section 3589, and the adjustment is not inconsistent with the terms of a written memorandum then in effect. The employer shall not agree to resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution, and has been given the opportunity to file a response.

3568. Rights of access and use by employee organizations

Subject to reasonable regulations, employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes and other means of communication, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this act.

3569. Released or reassigned time for representatives of exclusive representative

A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released or reassigned time without loss of compensation when engaged in meeting and conferring and for the processing of grievances prior to the adoption of the initial memorandum of understanding. When a memorandum of understanding is in effect, released or reassigned time shall be in accordance with the memorandum.

3569.5. California state universities; employee representatives; time off with compensation to attend meetings

(a) The state shall allow up to three employee representatives from each employee organization which represents employees of the California State University reasonable time off during working hours without loss of compensation or other benefits, to attend and make oral presentations at meetings of the Trustees of the California State University, or a committee thereof, held during the working hours of the employees, if a matter affecting conditions of employment is scheduled for consideration.

(b) Any employee organization wishing to send employee representatives to make oral presentations at such a meeting shall submit a request to the trustees far enough in advance to permit scheduling of speakers pursuant to rules and regulations of the trustees. Each employee organization shall be limited to not more than three speakers at any meeting.

(c) Only employee representatives who are named in the request submitted to the trustees as employee representatives who will make an oral presentation, and who intend to make an oral presentation, shall be allowed time off as specified in subdivision (a). Other employees may attend meetings by taking vacation time, compensating time off, or time off without pay if the workload permits, when approved by their supervisor.

(d) Nothing in this section shall preclude the trustees from adopting rules and regulations relating to time off for employees not represented by an employee organization to attend meetings.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to this chapter, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

3570. Meeting and conferring with employee organization by employer

Higher education employers, or such representatives as they may designate, shall engage in meeting and conferring with the employee organization selected as exclusive representative of an appropriate unit on all matters within the scope of representation.

3571. Unlawful employer practices

It shall be unlawful for the higher education employer to do any of the following:

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, “employee” includes an applicant for employment or reemployment.
- (b) Deny to employee organizations rights guaranteed to them by this chapter.
- (c) Refuse or fail to engage in meeting and conferring with an exclusive representative.
- (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. However, subject to rules and regulations adopted by the board pursuant to Section 3563, an employer shall not be prohibited from permitting employees to engage in meeting and conferring or consulting during working hours without loss of pay or benefits.
- (e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3590).
- (f) Consult with any academic, professional, or staff advisory group on any matter within the scope of representation for employees who are represented by an exclusive representative, or for whom an employee organization has filed a request for recognition or certification as an exclusive representative until such time as the request is withdrawn or an election has been held in which “no representative” received a majority of the votes cast. This subdivision is not intended to diminish the prohibition of unfair practices contained in subdivision (d). For the purposes of this subdivision, the term “academic” shall not be deemed to include the academic senates.

3571.1. Unlawful employee organization practices

It shall be unlawful for an employee organization to:

- (a) Cause or attempt to cause the higher education employer to violate Section 3571.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to engage in meeting and conferring with the higher education employer.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3590).

(e) Fail to represent fairly and impartially all the employees in the unit for which it is the exclusive representative.

(f) Require of employees covered by a memorandum of understanding to which it is a party the payment of a fee, as a condition precedent to becoming a member of such organization, in an amount which the board finds excessive or discriminatory under all the circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of employee organizations in higher education, and the wages currently paid to the employees affected.

(g) Cause, or attempt to cause, an employer to pay or deliver, or agree to pay or deliver, any money or other thing of value, in the nature of an exaction, for services which are not performed or are not to be performed.

3571.3. Expression or dissemination of opinions not constitute or be evidence of unfair labor practice; exceptions

The expression of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute, or be evidence of, an unfair labor practice under any provision of this chapter, unless such expression contains a threat of reprisal, force, or promise of benefit; provided, however, that the employer shall not express a preference for one employee organization over another employee organization.

3572. State university; meeting and conferring; written memoranda which require budgetary or curative action; approval

This section shall apply only to the California State University.

(a) The duty to meet and confer in good faith requires the parties to begin negotiations prior to the adoption of the final budget for the ensuing year sufficiently in advance of the adoption date so that there is adequate time for agreement to be reached, or for the resolution of an impasse. The California State University shall maintain close liaison with the Department of Finance and the Legislature relative to the meeting and conferring on provisions of the written memoranda that have fiscal ramifications. The Governor shall appoint one representative to attend the meeting and conferring, including the impasse procedure, to advise the parties on the views of the Governor on matters that would require an appropriation or legislative action, and the Speaker of the Assembly and the Senate Committee on Rules may each appoint one representative to attend the meeting and conferring to advise the parties on the views of the Legislature on matters that would require an appropriation or legislative action.

(b) No written memoranda reached pursuant to this chapter that require budgetary or curative action by the Legislature or other funding agencies shall be effective unless and until that action has been taken. Following execution of written memoranda of understanding, an appropriate request for financing or budgetary funding for all state-funded employees or for necessary legislation shall be forwarded promptly to the Legislature and the Governor or other funding agencies. When memoranda require legislative action pursuant to this section, if the Legislature or the Governor fail to fully fund the memoranda or to take the requisite curative action, the entire memoranda shall be referred back to the parties for further meeting and conferring unless the parties agree that provisions of the memoranda that are nonbudgetary and do not require funding shall take effect whether or not the funding requests submitted to the Legislature are approved.

3572.1. Maritime academy; meeting and conferring; written memoranda which require budgetary or curative action; approval for increased expenditures; memoranda of understanding; suspension or modification of provisions; effect of memoranda

This section shall apply only to the California Maritime Academy.

(a) The duty to engage in meeting and conferring requires the parties to begin meeting and conferring at least 60 days prior to the expiration of memoranda of understanding, or May 1, if earlier, of any year in which a memorandum shall expire, or May 1, if there is no existing memorandum of understanding. The trustees shall maintain close liaison with the Department of Finance and the Legislature relative to the meeting and conferring on provisions of the written memoranda that have fiscal ramifications.

No written memoranda reached pursuant to this chapter that require budgetary or curative action by the Legislature or other funding agencies, including the Federal Maritime Administration, shall be effective unless and until that action has been taken. Following execution of written memoranda of understanding, an appropriate request for financing or budgetary funding for all state-funded employees or for necessary legislation will be forwarded promptly to the Legislature and the Governor or other funding agencies. When memoranda require legislative action pursuant to this section, if the Legislature or the Governor fails fully to fund the memoranda or to take the requisite curative action, the entire memoranda shall be referred back to the parties for further meeting and conferring; provided, however, that the parties may agree that provisions of the memoranda that are nonbudgetary and do not require funding shall take effect whether or not the funding requests submitted to the Legislature are approved.

The Legislature recognizes that the California Maritime Academy's sources of funding are multiple, and approval by the Legislature, and by other public agencies, as to employees funded by those agencies, may be required prior to implementation of increased expenditures resulting from agreements reached in accordance with this chapter.

(b) The Legislature finds that federal funding in support of the California Maritime Academy is essential. The trustees may suspend or modify any provision of a memorandum of understanding that jeopardizes federal funding, but shall provide notice to exclusive representatives of any such suspension or modification and shall meet and confer with the exclusive representative, if requested to do so, to explain the need for, and the effects of, the suspension or modification.

(c) Any memorandum of understanding that is in effect at the time that the employer-employee relations of the California Maritime Academy is transferred from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1), to the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4 of Title 1), shall remain in effect until the end of the term of the memorandum of understanding, upon extension of the contracts in existence on June 30, 1995, or until superseded by a new memorandum of understanding.

(d) If agreement is reached to extend existing memoranda of understanding covering California Maritime Academy employees beyond the current June 30, 1995, expiration date, then any decisions, agreements, or settlements made by the California State University in the administration of the memoranda of understanding relative to

employees of the California Maritime Academy shall not be binding upon, or considered as precedent required to be followed by, the Department of Human Resources.

(e) This section shall become operative on July 1, 1995.

3572.3. University of California; meeting and conferring; written memorandum which require budgetary or curative action; approval

This section shall apply only to the University of California.

(a) The duty to engage in meeting and conferring requires the parties to begin meeting and conferring at least 60 days prior to the expiration of memoranda of understanding, or the May 1, if earlier, of any year in which a memorandum shall expire, or May 1, if there is no existing memorandum. The University of California and Hastings College of the Law shall maintain close liaison with the Department of Finance and the Legislature relative to the meeting and conferring on provisions of the written memoranda which have fiscal ramifications.

No written memoranda reached pursuant to the provisions of this chapter which require budgetary or curative action by the Legislature or other funding agencies shall be effective unless and until such an action has been taken. Following execution of written memoranda of understanding, an appropriate request for financing or budgetary funding in the aggregate for all state-funded employees or for necessary legislation will be forwarded promptly to the Legislature and the Governor or other funding agencies. When memoranda require legislative action pursuant to this section, if the Legislature or the Governor fail to fully fund the memoranda or to take the requisite curative action, the entire memoranda shall be referred back to the parties for further meeting and conferring; provided, however, that the parties may agree that provisions of the memoranda which are nonbudgetary and do not require funding shall take effect whether or not the aggregate funding requests submitted to the Legislature are approved. The Legislature recognizes that the University of California's sources of funding are multiple and approval by the Legislature, and by other public agencies, as to employees funded by those agencies, may be required prior to implementation of increased expenditures resulting from agreements reached in accordance with the provisions of this chapter.

**3572.5. Memorandum of understanding to control over provisions of law
in conflict**

(a) Except as provided in subdivision (b), in the case where the following provisions of law are in conflict with a memorandum of understanding, the memorandum of understanding shall be controlling.

(1) Part 13 (commencing with Section 22000) of, and Sections 66609, 89007, 89039, 89500, 89501, 89502, 89503, 89504, 89505, 89505.5, 89506, 89507, 89508, 89510, 89512, 89513, 89514, 89515, 89516, 89517, 89518, 89519, 89520, 89523, 89524, 89527, 89531, 89532, 89533, 89534, 89537, 89541, 89542, 89543, 89544, 89545, 89546, 89550, 89551, 89552, 89553, 89554, 89555, 89556, 89700, and 89701 of, the Education Code.

(2) Sections 825, 825.2, 825.6, 3569.5, 6700, 11020, and 11021, Chapter 2 (commencing with Section 18150) of Part 1 of Division 5 of Title 2, Sections 18200, 19841, 19848, 19850.6, and 19864, Article 4 (commencing with Section 19869) and Article 5 (commencing with Section 19878) of Chapter 2.5 of Part 2.6 of Division 5 of Title 2, and Section 22871.

(3) Sections 395, 395.01, 395.05, 395.1, and 395.3 of the Military and Veterans Code.

(b) (1) Notwithstanding the inclusion in Section 89542.5 of the Education Code, except with respect to paragraph (5) of subdivision (a) of that section, of a provision providing that, if the statute is in conflict with a memorandum of understanding reached pursuant to this chapter, the memorandum of understanding shall be controlling without further legislative action, unless the memorandum of understanding requires the expenditure of funds, that section, except for paragraph (5) of subdivision (a) of that section, provides a minimum level of benefits or rights, and is superseded by a memorandum of understanding only if the relevant terms of the memorandum of understanding provide more than the minimum level of benefits or rights set forth in that section, except for paragraph (5) of subdivision (a) of that section.

(2) This subdivision only applies to a memorandum of understanding entered into on or after January 1, 2002.

ARTICLE 5
EMPLOYEE ORGANIZATIONS: REPRESENTATION, RECOGNITION,
CERTIFICATION AND DECERTIFICATION

3573. Request for recognition as exclusive representative; filing; certification of majority support; notice; posting

An employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and conferring by filing a request with a higher education employer alleging that a majority of the employees in an appropriate unit wish to be represented by such organization and asking the employer to recognize it as the exclusive representative. The request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall certify that proof of majority support has been submitted to either the board or to a mutually agreed upon third party. Notice of any such request shall immediately be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.

3574. Grant of request; exceptions

The higher education employer shall grant a request for recognition filed pursuant to Section 3573 unless any of the following occurs:

(a) The employer reasonably doubts that the employee organization has majority support or reasonably doubts the appropriateness of the requested unit. In that case, the employer shall notify the board, which shall conduct a representation election or verify proof of majority support pursuant to Section 3577 unless subdivision (c) or (d) applies.

(b) Another employee organization either files with the employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. If the claim is evidenced by the support of at least 30 percent of the members of the proposed unit, a question of representation shall be deemed to exist and the board shall conduct a representation election pursuant to Section 3577. Proof of that support shall be submitted to either the board or to a mutually agreed upon third party.

(c) There is currently in effect a lawful written memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the request

for recognition, unless the request for recognition is filed not more than 120 days and not less than 90 days prior to the expiration date of the memorandum of understanding, provided that, if the memorandum of understanding has been in effect for three years or more, there shall be no restriction as to the time of filing the request. The existence of a memorandum of understanding, or current certification as the exclusive representative, shall be the proof of support necessary to trigger a representation election pursuant to Section 3577 to determine majority support when a request for recognition is made by another employee organization.

(d) Within the previous 12 months, either another employee organization has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the request for recognition, or a majority of the votes cast in a representation election held pursuant to Section 3577 were cast for “no representation.”

3575. Petition to board to decide whether employees selected or wish to select exclusive representative or appropriateness of unit

A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by:

(a) An employee organization alleging that it has filed a request for recognition as an exclusive representative with an employer and that the request has been denied or has not been acted upon within 30 days after the filing of the request; or

(b) An employee organization alleging that it has filed a competing claim of representation pursuant to subdivision (b) of Section 3574; or

(c) An employee organization wishing to be certified by the board as the exclusive representative. Such petition for certification as the exclusive representative in an appropriate unit shall include proof of a 30 percent showing of interest designating the organization as the exclusive representative of the employees.

3576. Petition for decertification of exclusive representative or reconsideration of appropriateness of unit

A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether the employees wish to

decertify an exclusive representative or to reconsider the appropriateness of a unit. Such petition may allege that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative, provided that such petition is supported by 30 percent of the employees in the unit indicating support for another organization or lack of support for the incumbent exclusive representative.

**3577. Petition on representation; investigations and hearings;
determination; exclusive representative; proof of support;
election; dismissal of petition**

(a) (1) (A) Upon receipt of a petition filed pursuant to Section 3575, the board shall conduct inquiries and investigations, or hold hearings, as it deems necessary in order to decide the questions raised by the petition. The determination of the board may be based upon the evidence adduced in the inquiries, investigations, or hearings.

(B) If the board finds, on the basis of the evidence, that a question of representation exists, or a question of representation is deemed to exist pursuant to subdivision (a) or (b) of Section 3574, it shall, in a case where the criteria of subparagraph (A) of paragraph (2) are not met, order that an election shall be conducted by secret ballot placing on the ballot all employee organizations evidencing support of at least 10 percent of the members of an appropriate unit, and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast. There shall be printed on the initial ballot the choice of “no representation.”

(C) If, at any election, no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted. The ballot for the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(2) (A) If the petitioning employee organization provides proof of support of more than 50 percent of the members of the appropriate unit, and no other employee organization has provided proof of support of at least 30 percent of the members of the appropriate unit, the employee organization providing the proof of support of more than 50 percent of the appropriate unit shall be certified by the board as the exclusive representative, as provided in subdivision (a) of Section 3563 and, where applicable, in Section 3579. The procedures for determining proof of support shall be defined by regulations of the board.

(B) In the event the petitioning employee organization does not provide proof of support of more than 50 percent of the members of the appropriate unit, or another

employee organization provides proof of support of at least 30 percent of the members of the appropriate unit, then the procedures of paragraph (1) shall apply.

(C) The existence of a memorandum of understanding, or current certification as the exclusive representative, shall be the proof of support necessary to trigger a representation election pursuant to this section to determine majority support when a request for recognition is made by another employee organization.

(3) An employee organization shall, at its discretion, submit proof of support for the purposes of this section either to the board or to a mutually agreed-upon third party.

(b) No election shall be held and the petition shall be dismissed whenever either of the following occurs:

(1) There is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the petition, unless the petition is filed not more than 120 days and not less than 90 days prior to the expiration date of that memorandum. If the memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition.

(2) Within the previous 12 months, either an employee organization other than the petitioner has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the petition, or a majority of the votes cast in a representation election held pursuant to subdivision (a) were cast for “no representation.”

3578. Duty of exclusive representative to represent all employees fairly and impartially

The employee organization recognized or certified as the exclusive representative shall represent all employees in the unit, fairly and impartially. A breach of this duty shall be deemed to have occurred if the employee organization’s conduct in representation is arbitrary, discriminatory, or in bad faith.

ARTICLE 6

UNIT DETERMINATION

3579. Factors in determination of appropriateness; presumptions; skilled craft employees; members of academic senate of University of California; exclusion of peace officers

(a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which the employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account factors such as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the higher education employer, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of the higher education employer and its employees to serve students and the public.

(4) The number of employees and classifications in a proposed unit, and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employee groups or any proliferation of units among the employees of the employer.

(b) There shall be a presumption that professional employees and nonprofessional employees shall not be included in the same representation unit. However, the

presumption shall be rebuttable, depending upon what the evidence pertinent to the criteria set forth in subdivision (a) establishes.

(c) There shall be a presumption that all employees within an occupational group or groups located principally within the State of California shall be included within a single representation unit. However, the presumption shall be rebutted if there is a preponderance of evidence that a single representation unit is inconsistent with the criteria set forth in subdivision (a) or with the purposes of this chapter.

(d) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a single, separate unit of representation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers. The single unit of representation shall include not less than all skilled crafts employees at a campus or at a Lawrence Laboratory.

(e) Notwithstanding the foregoing provisions of this section, the only appropriate representation units including members of the academic senate of the University of California shall be either a single statewide unit consisting of all eligible members of the senate, or divisional units consisting of all eligible members of a division of the senate. In addition to the limitations of subdivision (q) of Section 3562, the scope of representation of any divisional unit shall be limited to those matters which have customarily been determined on a division basis, but the employer shall consult with the exclusive representative of a division on matters which would be within the scope of representation or consultation of a statewide representative. When 35 percent of the eligible members of the academic senate are represented by an exclusive representative or representatives in divisional units, the board, on petition of a representative or of an organization comprised of those representatives, shall conduct an election to determine if the eligible members of the entire senate wish thereafter to be represented by a representative or organization in a single unit on all matters within the scope of representation. Any other exclusive representative or organization of representatives or any employee organization meeting the requirements of subdivision (a) of Section 3577 shall be entitled, on petition, to appear on the ballot, and in the event no choice receives a majority of the votes cast, the runoff provisions of subdivision (a) of Section 3577 shall be applicable.

(f) The board shall not determine that any unit is appropriate if it includes, together with other employees, employees who are defined as peace officers pursuant to subdivisions (b) and (c) of Section 830.2 of the Penal Code.

ARTICLE 6.5 SUPERVISORS

3580. Inapplicability of other provisions of chapter

Except as provided by this article, supervisory employees shall not have the rights, or be covered by, any provision or definition established by this chapter.

3580.3. Supervisory employee defined

“Supervisory employee” means any individual, regardless of the job description or title, having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. With respect to faculty or academic employees, any department chair, head of a similar academic unit or program, or other employee who performs the foregoing duties primarily in the interest of and on behalf of the members of the academic department, unit or program, shall not be deemed a supervisory employee solely because of such duties; provided, that with respect to the University of California and Hastings College of the Law, there shall be a rebuttable presumption that such an individual appointed by the employer to an indefinite term shall be deemed to be a supervisor. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

3580.5. Nonparticipation in handling of grievances, meet and confer sessions and votes on memoranda of understanding involving nonsupervisory employees

(a) Supervisory employees shall not participate in the handling of grievances on behalf of nonsupervisory employees. Nonsupervisory employees shall not participate in the handling of grievances on behalf of supervisory employees.

(b) Supervisory employees shall not participate in meet and confer sessions on behalf of nonsupervisory employees. Nonsupervisory employees shall not participate in meet and confer sessions on behalf of supervisory employees.

(c) The prohibition in subdivisions (a) and (b) shall not be construed to apply to the paid staff of an employee organization.

(d) Supervisory employees shall not vote on questions of ratification or rejection of memoranda of understanding reached on behalf of nonsupervisory employees.

3581.1. Right to form, join and participate in employee organizations; right to refuse

Supervisory employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of supervisory employee-employer relations as set forth in Section 3581.3. Supervisory employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the employer.

3581.2. Right of employee organization to represent members in employment relations and to make rules on membership

Employee organizations shall have the right to represent their supervisory employee members in their employment relations, including grievances, with the employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of employees from membership. Nothing in this section shall prohibit any employee from appearing on his or her own behalf or through his or her chosen representative in his or her employment relations and grievances with the higher education employer.

3581.3. Scope of representation

The scope of representation for supervisory employees shall include all matters relating to employment conditions and supervisory employee-employer relations including wages, hours, and other terms and conditions of employment.

3581.4. Meeting and conferring by employer with representatives of employee organizations

The higher education employer shall meet and confer with representatives of employee organizations upon request. Meet and confer means that they shall consider as fully as the employer deems reasonable such presentations as are made by the employee

organization on behalf of its supervisory members prior to arriving at a determination of policy or course of action.

3581.5. Time off without loss of compensation for representatives

The higher education employer shall allow a reasonable number of supervisory public employee representatives of verified employee organizations reasonable time off without loss of compensation or other benefits when meeting and conferring with representatives of the higher education employer on matters within the scope of representation.

3581.6. Prohibition of interference with, intimidation, restraint, coercion, or discrimination against employees by employers or employee organizations

The higher education employer and employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against supervisory employees because of their exercise of their rights under this article.

3581.7. Rules and regulations for administration of supervisory employer-employee relations

Subject to review by the board, the higher education employer may adopt reasonable rules and regulations for the administration of supervisory employee-employer relations under this article. Such rules and regulations may include provisions for:

- (a) Verifying that an employee organization does in fact represent supervisory employees of the employer.
- (b) Verifying the official status of employee organization officers and representatives.
- (c) Access of employee organization officers and representatives to work locations.
- (d) Use of official bulletin boards and other means of communication by employee organizations.
- (e) Furnishing nonconfidential information pertaining to supervisory employee relations to employee organizations.
- (f) Such other matters as are necessary to carry out the purposes of this article.

ARTICLE 7 ORGANIZATIONAL SECURITY

3582. Inclusion in scope of representation

Subject to the limitations set forth in this section, organizational security shall be within the scope of representation.

3583. Permissible forms; arrangement for decision of employee whether or not to join and deductions from compensation for dues

Permissible forms of organizational security shall be limited to either of the following:

(a) An arrangement pursuant to which an employee may decide whether or not to join the recognized or certified employee organization, but which requires the employer to deduct from the wages or salary of any employee who does join, and pay to the employee organization which is the exclusive representative of that employee, the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the written memorandum of understanding. This arrangement shall not deprive the employee of the right to resign from the employee organization within a period of 30 days prior to the expiration of a written memorandum of understanding.

(b) The arrangement described in Section 3583.5.

3583.5. Conditions of continued employment for California State University or University of California employees; payment of fair share fee

(a)(1) Notwithstanding any other provision of law, any employee of the California State University or the University of California, other than a faculty member of the University of California who is eligible for membership in the Academic Senate, who is in a unit for which an exclusive representative has been selected pursuant to this chapter, shall be required, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Upon notification to the employer by the

exclusive representative, the amount of the fee shall be deducted by the employer from the wages or salary of the employee and paid to the employee organization.

(2) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and conferring with the higher education employer.

(b) The organizational security arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (c). The higher education employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(c)(1) The organizational security arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the negotiating unit, and the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any memorandum of understanding in effect on or after January 1, 2000.

(2) If the organizational security arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all the employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the organizational security arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

3584. Exception to payment of fair share fee; conscientious objectors

(a) Notwithstanding Section 3583.5, an employee of the California State University or the University of California, other than faculty of the University of California who are eligible for membership in the Academic Senate, who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations, shall not be required to join or financially support any public employee organization as a condition of employment. An employee to which this subdivision is applicable may be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to the amount of the fair share service fee determined pursuant to subdivision (a) of Section 3583.5 to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three of these funds designated by the employer and the exclusive representative or, if the employer and exclusive representative fail to designate funds, chosen by the employee. Proof of these payments shall be made on a monthly basis to the employer as a condition of continued exemption from the requirement of financial support of the exclusive representative.

(b) Every recognized or certified employee organization that has an agency shop provision under this section shall keep an adequate itemized record of its financial transactions, and shall make available annually, to the employer and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by the president and treasurer or comparable officers. An employee organization covering employees governed under this chapter and required to file financial reports under the federal Labor-Management Disclosure Act of 1959 (29 U.S.C. Sec. 401 et seq.), or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirements of this section by providing the employer with a copy of those financial reports.

3585. Absence of arrangement; written authorization of employee; deductions and remissions to employee organization

In the absence of an arrangement pursuant to Section 3583 or 3583.5, an employer shall, upon written authorization by the employee involved, deduct and remit to the exclusive representative or, in the absence of an exclusive representative, to the employee organization of the employee's choice, the standard initiation fee, periodic dues, and general assessments of that organization, until the time an exclusive

representative has been selected for the employee's unit. Thereafter, deductions shall be made only for the exclusive representative.

3586. Trustees of California state university; continuation of payroll assignments

The Trustees of the California State University shall continue all payroll assignments authorized by an employee prior to and until recognition or certification of an exclusive representative until notification is submitted by an employee to discontinue the employee's assignments.

3587. Itemized record of financial transactions; maintenance; annual financial report; order of compliance

Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by the president and treasurer or comparable officers. In the event of failure of compliance with this section, any employee within the organization may petition the board for an order compelling such compliance, or the board may issue such compliance order on its motion.

**ARTICLE 8
RIGHTS, DISPUTES, ARBITRATION**

3589. Agreement to procedures in written memorandum of understanding; proceedings for court order to direct arbitration; award; enforcement

(a) An employer and an exclusive representative who enter into a written memorandum of understanding may agree to procedures for final and binding arbitration of disputes that may arise under the memorandum of understanding or between the parties.

(b) Where a party to a memorandum of understanding is aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the procedures provided therefor in the memorandum, the aggrieved party may bring proceedings pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil

Procedure for a court order directing that the arbitration proceed pursuant to the procedures provided therefor in such memorandum of understanding.

(c) An arbitration award made pursuant to this section shall be final and binding upon the parties and may be enforced by a court pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(d) The board shall submit a list of names of arbitrators to employers and employee organizations upon their mutual request. Nothing in this subdivision shall preclude the parties from mutually agreeing to some other means of selecting an arbitrator. The board shall also, if mutually requested to do so, designate an arbitrator to hear and decide the rights dispute.

ARTICLE 9 IMPASSE PROCEDURES

3590. Declaration; mediation procedure

Either an employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable memorandum of understanding. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the board without cost to the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure and in the event of such agreement, the board shall not appoint its own mediator, unless failure to do so would be inconsistent with the policies of this chapter. If the parties agree upon their own mediation procedure, the cost of the services of any appointed mediator, unless appointed by the board, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.

3591. Inability of mediator to effect settlement; factfinding panel; request for submission; selection; chairman

If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The board shall, within five days after such selection, select a chairman of the factfinding panel. The chairman designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 3590.

3592. Factfinding panel; hearings, investigations and inquiries; powers

The panel shall, within 10 days after its appointment, meet with the parties or their representatives and consider their respective positions. The panel may make additional inquiries and investigations, hold hearings, and take other steps which it may deem appropriate. For the purpose of the hearings, investigations, and inquiries, the panel may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The Regents of the University of California, the Directors of Hastings College of the Law, and the Trustees of the California State University shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel, except for those records, books, and information which are confidential by statute.

3593. Findings of fact and recommended terms of settlement; submission to parties and to public; payment of costs; applicability; posting of findings and recommendations; legislative intent

(a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The panel, subject to the rules and regulations of the board, may make those findings and recommendations public 10 days thereafter. During this 10-day period, the parties are prohibited from making the panel's findings and recommendations public.

(b) The costs for the services of the panel chairperson, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be borne by the board. Any other mutually incurred costs shall be borne equally by the employer and the exclusive representative. Each party shall bear the costs it incurs for the panel member it selects.

(c) (1) This subdivision applies only to disputes relating to the faculty and librarians of the University of California and the Hastings College of the Law. For the purposes of this subdivision, “faculty” means teachers employed to teach courses and authorize the granting of credit for the successful completion of courses, and excludes employees whose employment is contingent on their status as students.

(2) Irrespective of whether the panel makes its findings and recommendations public pursuant to subdivision (a), the Regents of the University of California and the Directors of the Hastings College of the Law, as appropriate, shall make the findings and recommendations of the panel public after the 10-day period prescribed by subdivision (a) has ended. These findings and recommendations shall be posted in a prominent public place, and copies of the findings and recommendations shall be made available to any person attending the next regularly scheduled public meeting of the regents or the directors, as appropriate. The publicly distributed agenda of the next regularly scheduled meeting of the regents or the directors, as appropriate, shall reference the availability of these findings and recommendations.

(3) It is the intent of the Legislature that the regents or the directors, as appropriate, shall act upon the findings and recommendations of the panel at an open and public meeting within 90 days of their submission to the parties by the panel.

3594. Mediator; continuation of efforts on basis of findings of fact and recommended terms of settlement

Nothing in this article shall be construed to prohibit the mediator appointed pursuant to Section 3590, with the permission of the parties, from continuing mediation efforts on the basis of the findings of fact and recommended terms of settlement made pursuant to Section 3594.

ARTICLE 10 PUBLIC NOTICE

3595. Initial proposals of exclusive representatives and employers; presentation; public record; meeting and conferring; commencement; regulations

(a) All initial proposals of exclusive representatives and of higher education employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the higher education employer and thereafter shall be public records.

(b) Meeting and conferring shall not commence on an initial proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the higher education employer.

(c) After the public has had the opportunity to express itself, the higher education employer shall, at a meeting which is open to the public, adopt a proposal, including any changes to its initial proposal which the higher education employer deems appropriate based on the public's comments.

(d) New subjects of meeting and conferring arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the higher education employer, the vote thereon by each member voting shall also be made public within 24 hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being met and conferred upon and have full opportunity to express their views on the issues to the higher education employer, and to know of the positions of the higher education employer.

ARTICLE 11 MISCELLANEOUS

3596. Open meeting laws; exemptions

All the proceedings set forth in this section shall be exempt from the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of

Title 2, and Section 92030 of the Education Code, unless the parties mutually agree otherwise:

- (a) Any meeting and conferring discussion between a higher education employer and a recognized or certified employee organization.
- (b) Any meeting of a mediator with either party or both parties to the meeting and conferring process.
- (c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.
- (d) Any executive session of the higher education employer or between the higher education employer and its designated representatives for the purpose of discussing its position respecting meeting and conferring or regarding any matter within the scope of representation or instructing its designated representatives.

3597. Student representatives; meeting and conferring on employees in student service or academic personnel

- (a) Subject to provisions of subdivision (d), in all meeting and conferring between higher education employers and employee organizations representing student service or academic personnel, a student representative shall have the right to be notified in writing by the employer and the employee organizations of the issues under discussion. A student representative shall have the right to be present and comment at reasonable times during meeting and conferring between the employer and such employee organizations.
- (b) The student representative shall be provided access to all documents exchanged between the parties pertaining to the meeting and conferring and shall have the right to have an aide present during all meetings; in the case of mediation of impasses, the student representative shall have an opportunity at reasonable times to comment to the mediator on impasse issues; and shall be free from coercion or reprisals in the exercise of his or her rights as set forth in this section.
- (c) The student representative shall respect and maintain the rules governing confidentiality as they pertain to all parties involved in the meeting and conferring. Violations of this provision shall result in the termination of student involvement for the remainder of such meeting and conferring, and such other remedy, if any, deemed appropriate by the board.

(d) For purposes of this section, a student representative shall be designated by the official student body association, if any, of the higher education employer, or segment thereof, engaged in meeting and conferring. If no student body association exists, the students may elect and designate a representative for the purposes of this section.

**3598. Memorandum of understanding; compliance with laws
prohibiting discrimination in employment**

No memorandum of understanding shall contravene any federal or state law, including rules and regulations promulgated pursuant to such laws, prohibiting discrimination in employment.

3599. Severability

If any provision of this chapter or the application of such provision to any person or circumstance shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**GOVERNMENT CODE
TITLE 1, DIVISION 4.5.
MEDIATION AND CONCILIATION SERVICE**

**CHAPTER 1
GENERAL PROVISIONS**

3600. California State Mediation and Conciliation Service; services and functions

There is within the Public Employment Relations Board a division known as the California State Mediation and Conciliation Service, which shall conduct the services provided pursuant to Section 3601 and carryout the functions vested by any other statute in the California State Mediation and Conciliation Service, the State Mediation and Conciliation Service, the State Conciliation Service, or the Division of Conciliation of the Department of Industrial Relations.

3601. Investigation and mediation of labor disputes; arbitration; public records

The board may investigate and mediate labor disputes providing any bona fide party to this type of dispute requests intervention by the board and the board may proffer its services to both parties when work stoppage is threatened and neither party requests intervention. In the interest of preventing labor disputes, the board shall endeavor to promote sound union-employer relationships. The board may arbitrate or arrange for the selection of boards of arbitration on those terms that as all of the bona fide parties to the dispute may agree upon. Any decision or award arising out of an arbitration conducted pursuant to this section is a public record. Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to a mediation conducted by the California State Mediation and Conciliation Service, and any person conducting the mediation. All other records of the California State Mediation and Conciliation Service relating to labor disputes are confidential.

3602. Reimbursement for election, arbitration, training, and facilitation services

Notwithstanding any other law, the board may seek and collect reimbursement from private and public sector employers, labor unions, and employee organizations for election, arbitration, training, and facilitation services provided by the California State Mediation and Conciliation Service pursuant to Section 3601 and for representation

services, including the provision of hearing officers, related to public transit labor relations provided by the California State Mediation and Conciliation Service pursuant to the Public Utilities Code.

CHAPTER 2

SUCCESSION TO FUNCTIONS AND RESPONSIBILITIES

3603. Public Employment Relations Board; transfer of powers, duties, and responsibilities; regulations; transfer of employees, property, and funds

(a) The Public Employment Relations Board succeeds to and is vested with all of the powers, duties, purposes, responsibilities, and jurisdiction vested in the Department of Industrial Relations and exercised or carried out through the California State Mediation and Conciliation Service.

(b) All powers, duties, and responsibilities of the Director of Industrial Relations or the Department of Industrial Relations under Sections 19455 and 19604 of the Business and Professions Code, Section 89542.5 of the Education Code, Section 57031 of the Food and Agricultural Code, Sections 3502.5, 3507.1, 3507.3, 71632.5, 71636.1, 71636.3, 71637, 71802 to 71806, inclusive, and 71814 of the Government Code, Sections 1164 and 2686 of the Labor Code, and Sections 25051, 25052, 28850, 28851, 30750, 30751, 30756, 40120, 40122, 50120, 50121, 70120, 70122, 90300, 95650, 95651, 98162.5, 100301 to 100306, inclusive, 101341, 101342, 101344, 102401, 102403, 103401 to 103406, inclusive, 105142, 120502 to 120505, inclusive, and 125521 to 125526, inclusive, of the Public Utilities Code, Section 4.2 (as repealed and added by Chapter 1335 of the Regular Session of the Statutes of 1971) and Section 4.4 (as added by the Chapter 1335 of the Regular Session of the Statutes of 1971) of the Fresno Metropolitan Transit District Act of 1961, and Sections 13.90 to 13.96, inclusive, of the West Bay Rapid Transit Authority Act (as added by Chapter 104 of the First Extraordinary Session of the Statutes of 1964) are hereby transferred to the Public Employment Relations Board.

(c) The regulations of the Director of Industrial Relations at Subchapter 2.2 (Sections 15800 to 15875.1, inclusive) and Subchapter 7 (Section 17300) of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations shall remain in effect and shall be deemed to be regulations of the Public Employment Relations Board.

(d) All persons serving in the state civil service, other than temporary employees, in the California State Mediation and Conciliation Service in the Department of Industrial

Relations, and engaged in the performance of functions transferred to the Public Employment Relations Board, are transferred to the Public Employment Relations Board. The status, positions, and rights of those persons shall not be affected by their transfer and shall continue to be retained by them pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2), except as to positions the duties of which are vested in a position exempt from civil service. The personnel records of all transferred employees shall be transferred to the Public Employment Relations Board.

(e) The property of the Department of Industrial Relations that is used exclusively or primarily for the functions transferred to the Public Employment Relations Board is transferred to the Public Employment Relations Board. If any doubt arises as to whether or where property is to be transferred, the Department of General Services shall determine whether or where the property is to be transferred.

(f) All unexpended balances of appropriations or other funds available for use in connection with any function or the administration of any law transferred to the Public Employment Relations Board shall be transferred to the Public Employment Relations Board. If any doubt arises as to whether or where those balances and funds are to be transferred, the Department of Finance shall determine whether or where those balances and funds are to be transferred.

CHAPTER 3

PUBLIC TRANSPORTATION LABOR DISPUTES

3610. Definitions

The definitions set forth in this section shall govern the construction and meaning of the terms used in this chapter:

(a) “Local agency” means any city, county, special district, or other public entity in the state. It includes a charter city or a charter county.

(b) “Public transit employee” means an employee of any transit district of the state, an employee of the Golden Gate Bridge, Highway and Transportation District, and an employee of any local agency who is employed to work for transit service provided by that agency.

3611. Public Transit Employees and Agencies; Disputes Between Exclusive Bargaining Representatives

Notwithstanding any other law, the following provisions shall govern disputes between exclusive bargaining representatives of public transit employees and local agencies:

- (a) The disputes shall not be subject to any fact-finding procedure otherwise provided by law.
- (b) Each party shall exchange contract proposals not less than 90 days before the expiration of a contract, and shall be in formal collective bargaining not less than 60 days before that expiration.
- (c) Each party shall supply to the other party all reasonable data as requested by the other party.
- (d) At the request of either party to a dispute, a conciliator from the California State Mediation and Conciliation Service shall be assigned to mediate the dispute and shall have access to all formal negotiations.

The provisions of this section shall not apply to any local agency subject to the provisions of Chapter 10 (commencing with Section 3500) of Division 4.

3612. Board investigation of labor disputes; report; strike or lockout prohibited

- (a) Whenever in the opinion of the Governor, a threatened or actual strike or lockout will, if permitted to occur or continue, significantly disrupt public transportation services and endanger the public's health, safety, or welfare, and upon the request of either party to the dispute, the Governor may appoint a board to investigate the issues involved in the dispute and to make a written report to him or her within seven days. The report shall include a statement of the facts with respect to the dispute, including the respective positions of the parties, but shall not contain recommendations. The report shall be made available to the public.
- (b) Any strike or lockout during the period of investigation of the board appointed pursuant to this section is prohibited.

3613. Board of investigation; membership; hearings

The board of investigation shall be composed of no more than five members, one of whom shall be designated by the Governor as chairperson. Members of the board shall receive one hundred dollars (\$100) for each day actually spent by them in the work of the board and shall receive their actual and necessary expenses incurred in the performance of their duties. The board may hold public hearings to ascertain the facts with respect to the causes and circumstances of the dispute. For the purpose of any hearing or investigation, the board may summon and subpoena witnesses, require the production of papers, books, accounts, reports, documents, records, and papers of any kind and description, to issue subpoenas, and to take all necessary means to compel the attendance of witnesses and procure testimony.

3614. Enjoining a strike or lockout; standard for issuing court order

Upon receiving a report from a board of investigation, the Governor may request the Attorney General to, and he or she shall, petition any court of competent jurisdiction to enjoin the strike or lockout or the continuing thereof, for a period of 60 days. The court shall issue an order enjoining the strike or lockout, or the continuation thereof, if the court finds that the threatened or actual strike or lockout, if permitted to occur or continue, will significantly disrupt public transportation services and endanger the public's health, safety, or welfare.

3615. Application of chapter; period for negotiating or meeting and conferring process

If the charter or establishing legislation of the local agency establishes a time period for the negotiating or meeting and conferring process which is shorter than 60 days, the provisions of this chapter shall not be applicable to any disputes which may arise between the exclusive bargaining representative of public transit employees and the local agency.

3616. Construction of chapter; employee right to strike

Except as expressly provided by subdivision (b) of Section 3612 and Section 3614, nothing in this chapter shall be construed to grant or deprive employees of a right to strike.

**GOVERNMENT CODE
TITLE 8, CHAPTER 7
TRIAL COURT EMPLOYMENT PROTECTION AND GOVERNANCE ACT**

**ARTICLE 1
GENERAL PROVISIONS**

71600. Short title

This chapter may be cited as the Trial Court Employment Protection and Governance Act.

71601. Definitions

For purposes of this chapter, the following definitions shall apply:

(a) “Appointment” means the offer to and acceptance by a person of a position in the trial court in accordance with this chapter and the trial court’s personnel policies, procedures, and plans.

(b) “Employee organization” means either of the following:

(1) Any organization that includes trial court employees and has as one of its primary purposes representing those employees in their relations with that trial court.

(2) Any organization that seeks to represent trial court employees in their relations with that trial court.

(c) “Hiring” means appointment as defined in subdivision (a).

(d) “Mediation” means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the trial court and the recognized employee organization or recognized employee organizations through interpretation, suggestion, and advice.

(e) “Meet and confer in good faith” means that a trial court or representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the

scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter or in a local rule, or when the procedures are utilized by mutual consent.

(f) “Personnel rules,” “personnel policies, procedures, and plans,” and “rules and regulations” mean policies, procedures, plans, rules, or regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

(g) “Promotion” means promotion within the trial court as defined in the trial court’s personnel policies, procedures, and plans, subject to meet and confer in good faith.

(h) “Recognized employee organization” means an employee organization that has been formally acknowledged to represent trial court employees by the county under Sections 3500 to 3510, inclusive, prior to the implementation date of this chapter, or by the trial court under former Rules 2201 to 2210, inclusive, of the California Rules of Court, as those rules read on April 23, 1997, Sections 70210 to 70219, inclusive, or Article 3 (commencing with Section 71630).

(i) “Subordinate judicial officer” means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, referee, traffic referee, and juvenile referee.

(j) “Transfer” means transfer within the trial court as defined in the trial court’s personnel policies, procedures, and plans, subject to meet and confer in good faith.

(k) “Trial court” means a superior court.

(l) “Trial court employee” means a person who is both of the following:

(1) Paid from the trial court’s budget, regardless of the funding source. For the purpose of this paragraph, “trial court’s budget” means funds from which the presiding judge of a trial court, or his or her designee, has authority to control, authorize, and direct expenditures, including, but not limited to, local revenues, all grant funds, and trial court operations funds.

(2) Subject to the trial court’s right to control the manner and means of his or her work because of the trial court’s authority to hire, supervise, discipline, and terminate employment. For purposes of this paragraph only, the “trial court” includes the judges

of a trial court or their appointees who are vested with or delegated the authority to hire, supervise, discipline, and terminate.

(m) A person is a “trial court employee” if and only if both paragraphs (1) and (2) of subdivision () are true irrespective of job classification or whether the functions performed by that person are identified in Rule 10.810 of the California Rules of Court. “Trial court employee” includes those subordinate judicial officers who satisfy paragraphs (1) and (2) of subdivision (). The phrase “trial court employee” does not include temporary employees hired through agencies, jurors, individuals hired by the trial court pursuant to an independent contractor agreement, individuals for whom the county or trial court reports income to the Internal Revenue Service on a Form 1099 and does not withhold employment taxes, sheriffs, temporary judges, and judges whether elected or appointed. Any temporary employee, whether hired through an agency or not, shall not be employed in the trial court for a period exceeding 180 calendar days, except that for court reporters in a county of the first class, a trial court and a recognized employee organization may provide otherwise by mutual agreement in a memorandum of understanding or other agreement.

71612. Modification or elimination of existing wages, hours, or terms and conditions of employment; application of act

Except as otherwise expressly provided in this chapter, the enactment of this act shall not be a cause for the modification or elimination of any existing wages, hours, or terms and conditions of employment of trial court employees. However, except as to those procedures, rights, or practices described in this chapter as minimum standards, the enactment of this act shall not prevent the modification or elimination of existing wages, hours or terms and conditions of employment through the meet and confer in good faith process or, in those situations in which the employees are either exempted from representation, or are not represented by a recognized employee organization, through appropriate procedures.

71614. Unification of trial courts; transitional provisions; application of this act

Nothing in this chapter shall be construed as affecting the interpretation or operation of Sections 70210 to 70219, inclusive, for purposes of unification of the trial courts.

71615. Implementation date of Act; exceptions

(a) Except as provided in subdivision (b), the effective date of this section shall be January 1, 2004.

(b) Representatives of a trial court and representatives of recognized employee organizations may mutually agree to an implementation date of this section later than January 1, 2004. However, if any provisions of this chapter are governed by an existing memorandum of understanding or agreement covering trial court employees, as to those provisions the implementation date shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement, unless representatives of the trial court and representatives of recognized employee organizations mutually agree otherwise.

(c) As of the implementation date of this chapter, all of the following shall apply:

(1) All persons who meet the definition of trial court employee shall become trial court employees at their existing or equivalent classifications.

(2) Employment seniority of a trial court employee, as calculated and used under the system in effect prior to the implementation of this act, shall be calculated and used in the same manner by the trial court.

(3) A trial court employee shall have the same status he or she had as a probationary, permanent, or regular employee under the system in effect prior to January 1, 2004. A probationary employee shall not be required to serve a new probationary period and shall continue the existing probationary period under the terms of hire.

(4) Subject to the agreement of the county, and unless prohibited or limited by charter provisions, the policies regarding transfer between the trial court and the county that are in place as of January 1, 2004, shall be continued while an existing memorandum of understanding or agreement remains in effect or for two years, whichever is longer, and any further rights of trial court employees to transfer between the trial court and the county shall be subject to the obligation to meet and confer in good faith at the local level between representatives of the trial court and representatives of recognized employee organizations and local negotiation between the trial court and the county. Subject to the agreement of the county, and unless prohibited or limited by charter provisions, the policies regarding the portability of seniority, accrued leave credits, and

leave accrual rates that are in effect January 1, 2004, shall be continued if trial court or county employees transfer between the trial court and the county or the county and the trial court while an existing memorandum of understanding or agreement remains in effect, or for a period of two years, whichever is longer. Any further right of trial court employees to portability is subject to the obligation to meet and confer in good faith between representatives of the trial court and representatives of recognized employee organizations and local negotiation between the trial court and the county.

(5) Each trial court shall be deemed the successor employer of all trial court employees in the county in which the trial court is located.

(d) In establishing local personnel structures for trial court employees in accordance with this chapter, the trial court shall comply with contractual obligations, and consideration shall be given to minimizing disruption of the trial court workforce and protecting the rights accrued by trial court employees under their current systems. However, prior contractual obligations and rights may be reconsidered subject to the obligation to meet and confer in good faith, provided both parties give consideration to past contractual obligations and rights.

(e) Unrepresented trial court employees are governed by a trial court's personnel policies, procedures, and plans. The implementation of this section may not be a cause for changing a trial court's personnel policies, procedures, and plans applicable to unrepresented trial court employees except where required to bring those policies, procedures, and plans into conformity with this chapter. Except as otherwise expressly provided in this section, a trial court retains all existing rights with respect to revising its personnel policies, procedures, and plans as applied to unrepresented trial court employees.

(f) Upon implementation of this section in a trial court, Sections 68650 to 68655, inclusive, and Rules 10.650 to 10.659, inclusive, of the California Rules of Court, shall be inoperative as to that trial court.

(g) Notwithstanding paragraph (4) of subdivision (c), both of the following shall apply:

(1) Unless prohibited or limited by charter provisions, the policies regarding transfer between either the trial court and the county or the county and the trial court that were in effect as of January 1, 2001, shall be continued while an existing memorandum of understanding or agreement remains in effect or until January 1, 2005, whichever period is longer. Thereafter, any rights of trial court employees to transfer between the trial court and the county shall be subject to the obligation to meet and confer in good

faith at the local level between representatives of the trial court and representatives of recognized employee organizations, and local negotiation between the trial court and the county.

(2) Unless prohibited or limited by charter provisions, the policies regarding the portability of seniority, accrued leave credits, and leave accrual rates that were in effect on January 1, 2001, shall be continued if trial court or county employees transfer between either the trial court and the county or the county and the trial court while an existing memorandum of understanding or agreement remains in effect, or until January 1, 2005, whichever period is longer. Thereafter, any right of trial court employees to portability is subject to the obligation to meet and confer in good faith between representatives of the trial court and representatives of recognized employee organizations and local negotiation between the trial court and the county.

71616. Severability

If any provision of this chapter, or the application thereof, to any person or circumstances, is held invalid, the invalidity shall not affect other provisions or application of the chapter which can be given effect without the invalid provisions or application and, to this end the provisions of this chapter are severable.

71618. Legislative findings and declarations; application of chapter

The Legislature hereby finds and declares that the status, rights, and protections provided to court employees under this chapter constitute a matter of statewide concern. Therefore, this chapter is applicable to all counties, notwithstanding charter provisions to the contrary. In order to ensure that effective court services are provided to all people of this state and to ensure stable court employer-employee relations, it is necessary that this chapter be applicable to all trial courts and court employees, as defined in this chapter, wherever situated within the State of California.

ARTICLE 2 AUTHORITY TO HIRE, CLASSIFICATION AND COMPENSATION

71620. Job classifications and appointments of officers, deputies, assistants and employees

(a) Each trial court may establish such job classifications and may appoint such trial court officers, deputies, assistants, and employees as are deemed necessary for the performance

of the duties and the exercise of the powers conferred by law upon the trial court and its members.

(b) Each trial court may appoint an executive or administrative officer who shall hold office at the pleasure of the trial court and shall exercise such administrative powers and perform such other duties as may be required by the trial court. The executive or administrative officer has the authority of a clerk of the trial court. The trial court shall fix the qualifications of the executive or administrative officer and may delegate to him or her any administrative powers and duties required to be exercised by the trial court.

71622. Subordinate judicial officers

(a) Each trial court may establish and may appoint any subordinate judicial officers that are deemed necessary for the performance of subordinate judicial duties, as authorized by law to be performed by subordinate judicial officers. However, the number and type of subordinate judicial officers in a trial court shall be subject to approval by the Judicial Council. Subordinate judicial officers shall serve at the pleasure of the trial court.

(b) The appointment or termination of a subordinate judicial officer shall be made by order of the presiding judge or another judge or a committee to whom appointment or termination authority is delegated by the court, and shall be entered in the minutes of the court.

(c) The Judicial Council shall promulgate rules establishing the minimum qualifications and training requirements for subordinate judicial officers.

(d) The presiding judge of a superior court may cross-assign one type of subordinate judicial officer to exercise all the powers and perform all the duties authorized by law to be performed by another type of subordinate judicial officer, but only if the person cross-assigned satisfies the minimum qualifications and training requirements for the new assignment established by the Judicial Council pursuant to subdivision (c).

(e) The superior courts of two or more counties may appoint the same person as court commissioner.

(f) As of the implementation date of this chapter, all persons who were authorized to serve as subordinate judicial officers pursuant to other provisions of law shall be authorized by this section to serve as subordinate judicial officers at their existing salary rate, which may be a percentage of the salary of a judicial officer.

(g) A subordinate judicial officer who has been duly appointed and has thereafter retired from service may be assigned by a presiding judge to perform subordinate judicial duties consistent with subdivision (a). The retired subordinate judicial officer shall be subject to the limits, if any, on postretirement service prescribed by the Public Employees' Retirement System, the county defined-benefit retirement system, as defined in subdivision (f) of Section 71624, or any other defined-benefit retirement plan from which the retired officer is receiving benefits. The retired subordinate judicial officer shall be compensated by the assigning court at a rate not to exceed 85 percent of the compensation of a retired judge assigned to a superior court.

**71622.5 Legislative declaration regarding implementation of the 2011
Realignment Legislation addressing public safety and intent to
afford courts maximum flexibility to manage caseloads;
appointment of hearing officers**

(a) The Legislature hereby declares that due to the need to implement the 2011 Realignment Legislation addressing public safety (Chapter 15 of the Statutes of 2011), it is the intent of the Legislature to afford the courts the maximum flexibility to manage the caseload in the manner that is most appropriate to each court.

(b) Notwithstanding Section 71622, the superior court of any county may appoint as many hearing officers as deemed necessary to conduct parole revocation hearings pursuant to Sections 3000.08 and 3000.09 of the Penal Code and to determine violations of conditions of postrelease supervision pursuant to Section 3455 of the Penal Code, and to perform related duties as authorized by the court. A hearing officer appointed pursuant to this section has the authority to conduct these hearings and to make determinations at those hearings pursuant to applicable law.

(c) (1) A person is eligible to be appointed a hearing officer pursuant to this section if the person meets one of the following criteria:

(A) He or she has been an active member of the State Bar of California for at least 10 years continuously prior to appointment.

(B) He or she is or was a judge of a court of record of California within the last five years, or is currently eligible for the assigned judge program.

(C) He or she is or was a commissioner, magistrate, referee, or hearing officer authorized to perform the duties of a subordinate judicial officer of a court of record of California within the last five years.

(2) The superior court may prescribe additional minimum qualifications for hearing officers appointed pursuant to this section and may prescribe mandatory training for those hearing officers in addition to any training and education that may be required as judges or employees of the superior court.

(d) The manner of appointment of a hearing officer pursuant to this section and compensation to be paid to a hearing officer shall be determined by the court. That compensation is within the definition of “court operations” pursuant to Section 77003 and California Rules of Court, rule 10.810.

(e) The superior courts of two or more counties may appoint the same person as a hearing officer under this section.

71623. Salaries

(a) Each trial court may establish a salary range for each of its employee classifications. Considerations shall include, but are not limited to, local market conditions and other local compensation-related issues such as difficulty of recruitment or retention.

(b) All persons who are trial court employees as defined in Section 71601, as of the implementation date of this chapter shall become trial court employees at their existing salary rate. For employees who are represented by a recognized employee organization, salary ranges may be subject to modification pursuant to the terms of a memorandum of understanding or agreement, or upon expiration of an existing memorandum of understanding or agreement subject to meet and confer in good faith. For employees who are not represented by a recognized employee organization, salary ranges may be revised by the trial court. However, as provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of salary ranges by a trial court.

71623.5. Workers’ compensation coverage

(a) As of July 1, 2001, trial courts shall provide workers’ compensation coverage for trial court employees under a workers’ compensation program established by the Administrative Office of the Courts or a program selected or approved by the Administrative Office of the Courts. The Judicial Council shall adopt rules of court requiring the Administrative Office of the Courts to establish a workers’ compensation

program for the trial courts and to provide guidance to the trial courts to ensure that the courts' workers' compensation coverage, including workers' compensation employer liability coverage, meets all legal requirements and is cost-efficient.

(b) If, as of the implementation date of this chapter, the county provides workers' compensation coverage for trial court employees, the county shall continue to provide the coverage, under the same terms and conditions as coverage was provided immediately preceding implementation of this chapter. This coverage shall continue for a transition period of up to 24 months after the implementation date of this chapter, unless the court gives the county 60 days' notice, or a mutually agreed to period of notice, that the court no longer needs the county to provide the coverage. Subject to approval by the Administrative Office of the Courts, the parties may mutually agree to county-provided coverage beyond the 24-month transition period.

(c) County provision of workers' compensation coverage for trial court employees shall not be construed to create a meet and confer obligation between the county and any recognized employee organization.

71624. Counties contracting with Board of Administration of Public Employees' Retirement System; corresponding county defined-benefit retirement programs

(a) A county that contracts with the Board of Administration of the Public Employees' Retirement System as of the implementation date of this chapter and the trial court located within that county shall establish a joint contract with the county under Section 20460.1 and subdivision (b) of Section 20469.1 in accordance with the pertinent provisions of the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2) and any other applicable rules of the retirement system. Eligibility to participate in the Public Employees' Retirement System shall be determined in accordance with the pertinent provisions of the Public Employees' Retirement Law and any other applicable rules of the retirement system. For all other counties and their corresponding county defined-benefit retirement system, a trial court employee shall be eligible to participate as a member in the existing county defined-benefit retirement system in the county in which the court is located.

(b) If a trial court employee participates as a member in a county defined-benefit retirement system, his or her participation shall be subject to the applicable statutes, rules, regulations, policies, and plan and contract terms of the retirement system as is any other member of the system. In accordance with these provisions, the trial court employee who is a member of a county defined-benefit retirement system shall have the right to receive

the same defined-benefit retirement plan benefits as county employees without the opportunity to meet and confer with the county as to those benefits. For all county defined-benefit systems other than the Public Employees' Retirement System, the trial court shall pay to the county retirement system at the same rate of contribution for trial court employees as is required of the county for county employees under the county retirement system for the same benefit level. Provided that a county and a trial court are parties to a joint contract with CalPERS for the provision of retirement benefits under Sections 20460.1 and 20469.1, the county defined-benefit retirement system contribution rates for the trial court shall be the same as the contribution rates for the county for the same benefit levels.

(c) Unless otherwise required by law, as provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the trial court employee's contractual coverage under, or exclusion from, social security.

(d) To facilitate trial court employee participation in county defined-benefit retirement plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(e) Nothing in this section precludes a trial court from offering a different defined-benefit retirement plan for trial court employees that is separate from the county defined-benefit retirement plan, subject to the terms of a memorandum of understanding or agreement for represented employees, or the terms of trial court policies, procedures, or plans, for unrepresented employees. The mechanism for implementation of these plans shall be created by statute.

(f) For purposes of this section, "county defined-benefit retirement system" means a defined-benefit retirement system administered by the county or applicable governing body, including systems established pursuant to the Public Employees Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2), the County Employees' Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 3 of Title 3), or an independent retirement system or plan.

(g) On the date this chapter is implemented, a trial court employee who is a member of any county defined-benefit retirement system shall continue to be eligible to receive the same level of benefits that the member was eligible to receive prior to implementation of this chapter.

71625. Accrued leave benefits

(a) Trial court policies related to accrued leave benefits, including the type and accrual rate of accrued leave benefits, in effect on the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (c).

(b) The implementation of this chapter shall not cause a termination of employment and rehire for purposes of accrued leave benefits and shall not result in either the trial court or the county cashing out trial court employees' accrued leave balances. A trial court employee shall retain his or her accrued leave balances upon implementation of this chapter. A trial court employee shall not cash out his or her accrued leave balances solely as a result of implementation of this chapter.

(c) For employees who are represented by a recognized employee organization, the type and accrual rate of, and policies relating to, accrued leave benefits are subject to modification pursuant to the terms of a memorandum of understanding or agreement, or upon expiration of an existing memorandum of understanding or agreement, or upon revision to personnel, policies, procedures and plans, subject to meet and confer in good faith. For employees who are not represented by a recognized employee organization, the type and accrual rate of, and policies relating to, accrued leave benefits may be revised by the trial court. However, as provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the type and accrual rate of, and policies relating to, accrued leave benefits.

71626. Retirement benefits

Notwithstanding any other provision of law, with respect to benefits which those persons who are trial court employees on and after the implementation date of this chapter would receive upon retirement, the following provisions shall apply:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee. The level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b) or (c). If the same retiree group insurance benefits are not otherwise permitted by law or the vendor, the same level of retiree group insurance benefits shall be provided subject to subdivision (b).

(b) (1) For employees who are represented by a recognized employee organization, (A) the level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee pursuant to the terms of a memorandum of understanding or agreement is subject to modification only pursuant to the terms of that memorandum of understanding or agreement, and upon expiration of that memorandum of understanding or agreement, those retiree group insurance benefits may not be modified except pursuant to a subsequent memorandum of understanding or agreement; and (B) the level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee pursuant only to personnel, policies, procedures, and plans, may be modified by the trial court, subject to meet and confer in good faith.

(2) For employees who are not represented by a recognized employee organization, the level of retiree group insurance benefits may be revised by the trial court.

(c) A county shall have the authority to provide retiree group insurance benefits to retired trial court employees. If the county administers retiree group insurance benefits to trial court employees or retired trial court employees, or if the trial court contracts with the county to administer retiree group insurance benefits to trial court employees or retired trial court employees, a trial court employee or retired trial court employee shall be eligible to participate in county retiree group insurance benefits and plans subject to county retiree group insurance benefit regulations, policies, terms and conditions, and subject to both of the following:

(1) A trial court employee or retired trial court employee shall have the right to accrual of retiree group insurance benefits, or to receive the same level of retiree group insurance benefits as county employees in similar classifications as designated by the trial court subject to meet and confer in good faith, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee is subject to modification by the county, if the county changes the level of retiree group insurance benefits of county employees in classifications that have been designated as similar classifications pursuant to paragraph (1).

(d) For purposes of this section:

(1) “Retiree group insurance benefits” means group insurance benefits which trial court employees would receive upon retirement.

(2) “County,” means the board of supervisors of the county where the trial court is located, or the applicable governing body for the retirement system of such county.

(e) The trial court shall reimburse the county for the cost of coverage of retired trial court employees in county retiree group insurance benefit plans. The county may charge the trial court for retiree group insurance benefits only the amount that the county is required to pay in excess of the retirement system funding or prefunding of the retiree group insurance benefits. The county and the trial court may agree to an alternative arrangement to fund retiree group insurance benefits.

71626.1. Cleaning and maintenance services

(a) Any trial court receiving cleaning or maintenance services from persons employed directly by the court or county shall continue to receive those services from persons employed directly by a trial court or county in which the trial court is located.

(b) If the trial court replaces the county in providing cleaning or maintenance services, county employees who have been providing those services to the trial court have the right, prior to any other hiring by the trial court of persons to provide those services, to, at their own option, transfer employment directly from the county to the trial court without a break in service, either when those services are transferred from the county to the trial court, or anytime within two years from the date of that transfer of services if a vacancy exists at the time of the requested transfer. Furthermore, the trial court and an employee organization may by mutual agreement permit county employees providing cleaning or maintenance services in county facilities other than the trial court the option of transferring to the trial court upon such terms as are agreed upon by the trial court and the employee organization if there is a vacancy that no county employee who has been providing cleaning and maintenance services to the trial court opts to fill.

(c) If a county employee who provides cleaning or maintenance services to a trial court transfers employment directly from the county to the trial court without a break in service, upon the date of transfer, that employee shall be considered a trial court employee, as defined in Section 71601 subject to all applicable provisions of this chapter.

(d) The transfer of employment from the county to the trial court under this section shall not be deemed a termination of employment by the county and rehire by the trial court for the purposes of accrued leave benefits, employment seniority, and employment status as a probationary or regular employee. The transfer of employment shall not be the sole cause for a modification of wages or benefits of any kind.

71626.5. Retiree group insurance benefits

(a) As of the implementation date of this chapter:

(1) If a trial court employee receives county retiree group insurance benefits pursuant to Section 71626 and that county funds retiree group insurance benefits from excess funds in the county's retirement system, or prefunds retiree group insurance benefits, the county or county retirement board shall administer retiree group insurance benefits to trial court employees who retire from the county retirement system. However, the county and the trial court may agree to an alternative arrangement to administer retiree group insurance benefits.

(2) In all other counties in which the trial court exercises its authority to provide retiree group insurance benefits to its employees, (A) if the trial court administers retiree group insurance benefits to trial court employees separately from the county, the trial court shall continue to administer these benefits as provided under existing personnel policies, procedures, plans, or a trial court employee memorandum of understanding or agreement; and (B) if the county administers retiree group insurance benefits to trial court employees or if the trial court contracts with the county to administer retiree group insurance benefits to trial court employees, the county may continue to administer retiree group insurance benefits to trial court employees pursuant to subdivision (c) of Section 71626 or the trial court may administer retiree group insurance benefits to trial court employees pursuant to the following transition process:

(i) While an existing memorandum of understanding or agreement remains in effect or for a transition period of up to 24 months, whichever is longer, the county shall administer retiree group insurance benefits for represented trial court employees who retire during that period, as provided in the applicable memorandum of understanding or agreement, unless the county is notified by the trial court pursuant to subparagraph (iv) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits.

(ii) For a transition period of up to 24 months after the implementation date of this chapter, the county shall administer retiree group insurance benefits for unrepresented trial court employees who retire during that period, unless notified by the trial court pursuant to subparagraph (iv) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits. During the 24-month transition period, if the county decides to change how it administers unrepresented trial court employees' retiree group

insurance benefits, the county shall provide the trial court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in the administration of the benefits is implemented so the trial court can decide whether to accept the county's change or consider alternatives and arrange to administer or provide benefits on its own.

(iii) If, during the 24-month transition period, the trial court decides to offer particular retiree group insurance benefits different from what the county is administering, the trial court shall be responsible for administering those particular retiree group insurance benefits.

(iv) If the trial court intends to give notice to the county that it no longer needs the county to administer specified retiree group insurance benefits to trial court employees, the trial court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.

(b) A county's agreement to administer retiree group insurance benefits shall not be construed to create a meet and confer obligation between the county and any recognized employee organization.

(c) Nothing in this section precludes a trial court from offering a different retiree group insurance benefits plan for trial court employees that is separate from the county retiree group insurance benefits plans, subject to the terms of a memorandum of understanding or agreement for represented employees, or the terms of trial court policies, procedures, or plans, for unrepresented employees.

71627. Federally regulated benefits provided to trial court employees; modification of levels

Notwithstanding any other provision of law:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of federally regulated benefits provided to a trial court employee. The level of federally regulated benefits provided to a trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b). If the same federally regulated benefits are not permitted by law or by the vendor, the same level of federally regulated benefits shall be provided by the trial court subject to the provisions of subdivision (b).

(b) (1) For employees who are represented by a recognized employee organization, (A) the level of federally regulated benefits accruing to a trial court employee pursuant to the

terms of a memorandum of understanding or agreement is subject to modification only pursuant to the terms of that memorandum of understanding or agreement, and upon expiration of that memorandum of understanding or agreement, those federally regulated benefits may not be modified except pursuant to a subsequent memorandum of understanding or agreement; and (B) the level of federally regulated benefits accruing to a trial court employee pursuant only to personnel, policies, procedures, and plans may be modified by the trial court, subject to meet and confer in good faith.

(2) For employees who are not represented by a recognized employee organization, the level of federally regulated benefits may be revised by the trial court.

(c) If the county administers federally regulated benefits to trial court employees, or if the trial court contracts with the county to administer federally regulated benefits to trial court employees, a trial court employee shall be eligible to participate in federally regulated benefits subject to federally regulated benefit regulations, policies, terms, and conditions, and subject to both of the following requirements:

(1) A trial court employee shall have the right to receive the same level of federally regulated benefits as county employees in similar classifications, as designated by the trial court subject to the obligation to meet and confer in good faith, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of federally regulated benefits accruing to a trial court is subject to modification by the county if the county changes the level of federally regulated benefits of county employees in classifications that have been designated as similar classifications pursuant to paragraph (1).

(d) For purposes of this section, “federally regulated benefits” means benefits that provide tax-favored treatment for employees pursuant to federal laws or regulations, including, but not limited to, cafeteria plans under Section 125 of the Internal Revenue Code, educational assistance benefits under Section 127 of the Internal Revenue Code, and fringe benefits under Section 132 of the Internal Revenue Code, but not including federally-regulated deferred compensation plan benefits provided to trial court employees pursuant to Section 71628.

(e) As of the implementation date of this chapter:

(1) If the trial court administers federally regulated benefits for trial court employees separately from the county, the trial court shall administer these benefits as provided

under existing personnel policies, procedures, plans, or a memorandum of understanding or agreement applicable to trial court employees.

(2) If the county administers federally regulated benefits for trial court employees, or if the trial court contracts with the county to administer federally regulated benefits, the following provisions govern the transition of responsibility for administering these benefits to the trial court:

(A) Until the effective date of the transition of responsibility, the county shall continue to administer represented trial court employees' federally regulated benefits as provided in the memorandum of understanding or agreement and unrepresented trial court employees' federally regulated benefits as provided in personnel policies, procedures, and plans.

(B) During the period of time between the implementation date of this chapter and the effective date of the transition of responsibility, both the trial court and the county shall cosponsor the federally regulated benefit plan. Cosponsorship shall continue as long as trial court employees are governed by a plan not offered by the trial court, but in no event longer than 18 months after the implementation date of this chapter, or the term of the memorandum of understanding or agreement applicable to trial court employees, whichever is longer, unless the trial court and the county agree to continued cosponsorship.

(C) If during the cosponsorship period the trial court decides to offer particular benefits that are different from what the county is administering, then the trial court shall be responsible for administering those particular benefits unless the trial court and county agree otherwise.

(D) The effective date of the transition of responsibility shall coincide with the first day of the applicable federally regulated benefits plan year to ensure that there is no financial impact on the employee or on either employer.

(f) To facilitate trial court employee participation in county federally regulated benefits plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(g) The trial court shall reimburse the county for the cost of any coverage of trial court employees in county federally regulated benefit plans.

(h) A county shall have authority to cosponsor federally regulated benefits with a trial court to provide those benefits to trial court employees if those benefits are requested by the trial court subject to county agreement to cosponsor those benefits. A county's agreement to cosponsor those benefits shall not be construed as creating a meet and confer obligation between the county and any recognized trial court employee organization.

(i) Nothing in this section shall prevent a trial court from offering to trial court employees a future option of participating in other federally regulated benefit plans that may be developed subject to the obligation to meet and confer in good faith.

71628. Deferred compensation plan benefits; modification of levels

Notwithstanding any other provision of law:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of deferred compensation plan benefits provided to a trial court employee. If the same deferred compensation plan benefits are not permitted by law or the plan vendor, the trial court shall provide other deferred compensation plan benefits at the same level, subject to the provisions of subdivision (b). The level of deferred compensation plan benefits provided to a trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b).

(b) (1) For employees who are represented by a recognized employee organization, (A) the level of deferred compensation plan benefits accruing to a trial court employee pursuant to the terms of a memorandum of understanding or agreement is subject to modification only pursuant to the terms of that memorandum of understanding or agreement, and upon expiration of that memorandum of understanding or agreement, those deferred compensation plan benefits may not be modified except pursuant to a subsequent memorandum of understanding or agreement; and (B) the level of deferred compensation plan benefits accruing to a trial court employee pursuant only to personnel, policies, procedures, and plans may be modified by the trial court, subject to meet and confer in good faith.

(2) For employees who are not represented by a recognized employee organization, the level of deferred compensation plan benefits may be modified by the trial court.

(c) If the county administers deferred compensation plan benefits to trial court employees, or if the trial court contracts with the county to administer deferred

compensation plan benefits to trial court employees, a trial court employee shall be eligible to participate in deferred compensation plan benefits subject to deferred compensation plan regulations, policies, terms and conditions, and subject to both of the following:

(1) A trial court employee shall have the right to receive the same level of deferred compensation plan benefits as county employees in similar classifications, as designated by the trial court subject to the obligation to meet and confer in good faith, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of deferred compensation plan benefits accruing to a trial court employee is subject to modification by the county if the county changes the level of deferred compensation plan benefits of county employees in classifications that have been designated as similar classifications pursuant to paragraph (1).

(d) If the implementation of this chapter causes a change in deferred compensation plans and requires the transfer of trial court employees' plan balances to the trial court's deferred compensation plan, trial court employees shall not suffer a financial loss due to transfer-related penalties, such as deferred sales charges, and any financial loss due to transfer-related penalties shall be borne by the trial court.

(e) Trial court employees shall continue to be eligible to receive deferred compensation plan benefits from the county or the trial court. For purposes of deferred compensation plans established under Section 401(k) or 457 of the Internal Revenue Code, one of the following shall apply:

(1) If permitted by federal law and deferred compensation plan vendors, trial court employees shall continue to receive federal 401 (k) or 457 deferred compensation plan benefits through county plans unless the trial court modifies its plan benefits pursuant to personnel rules, subject to meet and confer in good faith.

(2) If not permitted by federal law or deferred compensation plan vendors, the trial court shall provide deferred compensation plan benefits at the same level subject to meet and confer in good faith, in which case upon transition to the new deferred compensation plan, (A) to provide the trial court time to investigate plan options, negotiate plan contracts, and establish plans, there shall be a transition period of at least six months, during which trial court employees shall continue to receive deferred compensation plan benefits from the county; and (B) a county may require that trial court employees leave their plan balances in the county's deferred compensation plan or may transfer trial court employees' plan balances to the trial court's deferred compensation plan.

(f) To facilitate trial court employee participation in county deferred compensation plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(g) The trial court shall reimburse the county for the cost of any coverage of trial court employees in county deferred compensation plans.

(h) A county is authorized to amend the documents of a deferred compensation plan established under Section 401(k) or 457 of the Internal Revenue Code as necessary to achieve the objectives of this section.

(i) Nothing in this section precludes the possibility that a trial court employee may have a future option of participating in other deferred compensation plans that may be developed subject to the obligation to meet and confer in good faith.

71629. Trial court employment benefits; modification of levels

Except as provided in Sections 71624, 71625, 71626, 71626.5, 71627, and 71628, and notwithstanding any other provision of law:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of trial court employment benefits. If the same trial court employment benefits are not permitted by law or the plan vendor, the trial court shall provide other trial court employment benefits at the same level subject to the provisions of subdivision (b). The level of trial court employment benefits provided to a trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b).

(b) For employees who are represented by a recognized employee organization, the level of trial court employment benefits provided to a trial court employee may not be modified until after the expiration of an existing memorandum of understanding or agreement or a period of 24 months, whichever is longer, unless the trial court and recognized employee organization mutually agree to a modification. For employees who are not represented by a recognized employee organization, the level of trial court employment benefits may be revised by the trial court.

(c) The trial court shall reimburse the county for the cost of coverage of trial court employees in trial court employment benefit plans. If the county administers trial court employment benefits to trial court employees, or if the trial court contracts with the

county to administer trial court employment benefits to trial court employees, a trial court employee shall be eligible to participate in trial court employment benefits subject to trial court employment benefit regulations, policies, terms and conditions, and subject to both of the following:

(1) A trial court employee shall have the right to receive the same level of trial court employment benefits as county employees in similar classifications, as designated by the trial court subject to the obligation to meet and confer in good faith, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of trial court employment benefits accruing to a trial court employee is subject to modification by the county if the county changes the level of the same employment benefits accruing to county employees in classifications that have been designated as similar classification pursuant to paragraph (1).

(d) As of the implementation date of this chapter:

(1) If the trial court administers trial court employment benefits to trial court employees separately from the county, the trial court shall continue to administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding or agreements.

(2) If the county administers trial court employment benefits to trial court employees or if the trial court contracts with the county to administer trial court employment benefits to trial court employees, the county may continue to administer trial court employment benefits to trial court employees pursuant to subdivision (e) or the trial court may administer trial court employment benefits to trial court employees pursuant to the following transition process:

(A) While an existing memorandum of understanding or agreement remains in effect or for a transition period of 24 months, whichever is longer, the county shall administer trial court employment benefits for represented trial court employees as provided in the applicable memorandum of understanding or agreement, unless the county is notified by the trial court pursuant to subparagraph (D) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits.

(B) For a transition period of up to 24 months after the implementation date of this chapter, the county shall administer trial court employment benefits for unrepresented trial court employees, unless notified by the trial court pursuant to subparagraph (D) that

the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits. During the transition period, if the county intends to change unrepresented trial court employees' trial court employment benefits, the county shall provide the trial court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the trial court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.

(C) If, during the transition period, the trial court decides to offer particular trial court employment benefits that are different from what the county is administering, the trial court shall be responsible for administering those particular benefits.

(D) If the trial court decides that it no longer needs the county to administer specified trial court employment benefits to trial court employees, the trial court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.

(e) To facilitate trial court employee participation in county trial court employment benefit plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(f) A county shall have authority to provide trial court employment benefits to trial court employees if those benefits are requested by the trial court and subject to county concurrence to providing those benefits. A county's agreement to provide those benefits shall not be construed to create a meet and confer obligation between the county and any recognized employee organization.

(g) Nothing in this section shall prevent the trial court from arranging for trial court employees other trial court employment benefits plans subject to the obligation to meet and confer in good faith.

ARTICLE 3 LABOR RELATIONS

71630. Purpose of Article

(a) It is the purpose of this article to promote full communication between trial courts and their employees by providing a reasonable method for resolving disputes regarding wages, hours, and other terms and conditions of employment between trial courts and recognized employee organizations. It is also the purpose of this article to promote the improvement of personnel management and employer-employee relations within the trial

courts in the state by providing a uniform basis for recognizing the right of trial court employees to join organizations of their own choice and be represented by those organizations in their employment relations with trial courts. It is also the purpose of this article to extend to trial court employees the right, and to require trial courts, to meet and confer in good faith over matters within the scope of representation, consistent with the procedures set forth in this article. This article is not intended to require changes in existing representation units, memoranda of agreement or understanding, or court rules, except as provided in this article.

(b) The Legislature finds and declares that the duties and responsibilities of trial court representatives under this article are substantially similar to the duties and responsibilities required under existing collective bargaining enforcement procedures and therefore the costs incurred by the trial court representatives in performing those duties and responsibilities under this article are not reimbursable as state-mandated costs.

71631. Employee organizations; rights of trial court employees

Except as otherwise provided by the Legislature, trial court employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Trial court employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the trial court.

71632. Agency shop agreements

(a) Notwithstanding any other provision of law, rule, or regulation, an agency shop agreement may be negotiated between a trial court and a recognized employee organization which has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, and enactments, in accordance with this article. As used in this article, “agency shop” means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of that organization for the duration of the agreement or a period of three years from the effective date of the agreement, whichever comes first. However, any employee who is a member of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting recognized employee organizations shall not be required to join or financially support any recognized employee organization as a condition of employment. Such an employee may be required, in lieu of periodic dues,

initiation fees, or agency shop fees to pay sums equal to those dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable organization fund exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three such funds designated in a memorandum of understanding or agreement between the trial court and the recognized employee organization, or if the memorandum of understanding or agreement fails to designate such funds, then to any such fund chosen by the employee. Proof of those payments shall be made on a monthly basis to the trial court as a condition of continued exemption from the requirement of financial support to the recognized employee organization.

(b) An agency shop provision in a memorandum of understanding or agreement which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding or agreement, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; and (3) the vote may be taken at anytime during the term of such memorandum of understanding or agreement, but in no event shall there be more than one vote taken during that term. However, the trial court and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on any agency shop agreement.

(c) An agency shop agreement shall not apply to management, confidential, or supervisory employees.

(d) Every recognized employee organization which has agreed to an agency shop provision shall keep an adequate itemized record of its financial transactions and shall make available annually, to the trial court with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Disclosure Act of 1959 covering employees governed by this chapter or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the trial court with a copy of those financial reports.

(e) If the trial court is party to any memorandum of understanding or agreement with any bargaining unit that includes court employees that provides for an agency shop provision as of the implementation date of this chapter, the trial court and employee organization

representing the trial court employees shall be obligated to honor the terms of the agency shop provision, including indemnification provisions, if any, for the duration of the memorandum of understanding or agreement. A new agency shop election shall not be caused upon implementation of this chapter.

(f) This section shall remain in effect until such time as Section 3502.5 is amended to provide that a 30-percent or greater showing of interest by means of a petition requires an election regarding an agency shop, and a vote at that election of 50 percent plus one of those voting secures an agency shop arrangement, and as of that date this section is repealed.

71632.5. Negotiations of agency shop agreements; effective date of agreements; rescission; financial reporting requirements

(a) Notwithstanding any other provision of law, rule, or regulation, an agency shop agreement may be negotiated between a trial court and a recognized employee organization that has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, and enactments, in accordance with this article. As used in this article, “agency shop” means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of that organization for the duration of the agreement or a period of three years from the effective date of the agreement, whichever comes first. However, any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting recognized employee organizations shall not be required to join or financially support any recognized employee organization as a condition of employment. That employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees to pay sums equal to those dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable organization fund exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three funds, designated in a memorandum of understanding or agreement between the trial court and the recognized employee organization, or if the memorandum of understanding or agreement fails to designate any funds, then to any fund chosen by the employee. Proof of those payments shall be made on a monthly basis to the trial court as a condition of continued exemption from the requirement of financial support to the recognized employee organization.

(b) An agency shop provision in a memorandum of understanding or agreement which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding or agreement under the following circumstances:

(1) A request for the vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit.

(2) The vote is by secret ballot.

(3) The vote may be taken at any time during the term of the memorandum of understanding or agreement, but in no event shall there be more than one vote taken during that term.

(c) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the trial court and a recognized employee organization or recognized employee organizations shall be placed in effect, without a negotiated agreement, upon (1) a signed petition of at least 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. The petition may only be filed after the recognized employee organization has requested the trial court to negotiate on an agency shop arrangement and, beginning seven working days after the trial court received this request, the two parties have had 30 calendar days to attempt good faith negotiations in an effort to reach agreement. An election, that may not be held more frequently than once a year, shall be conducted by the California State Mediation and Conciliation Service in the event that the trial court and the recognized employee organization cannot agree within 10 days from the filing of the petition to select jointly a neutral person or entity to conduct the election. In the event of an agency fee arrangement outside of an agreement that was in effect on January 1, 2002, the recognized employee organization shall defend, indemnify, and hold the trial court harmless against any liability arising from any claims, demands, or other action relating to the trial court's compliance with the agency fee obligation. Upon notification to the trial court by the recognized employee organization, the amount of the fee shall be deducted by the trial court from the wages or salary of the employee and paid to the employee organization. This subdivision shall be applicable on the operative date of this section, except that if a memorandum of understanding or agreement between the trial court and a recognized employee organization was in effect before January 1, 2002, as to the employees covered by the memorandum of understanding or agreement, the implementation date of this subdivision shall be either the date a successor memorandum of understanding or agreement is effective or, if no

agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement. The trial court and representatives of recognized employee organizations may mutually agree to a different date on which this subdivision is applicable.

(d) Notwithstanding subdivisions (a), (b), and (c), the trial court and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on any agency shop agreement.

(e) An agency shop agreement or arrangement does not apply to management, confidential, or supervisory employees. If those employees nonetheless choose to join the recognized employee organization and pay dues or pay the organization a service fee, Section 71638 shall apply to those employees, and the trial court shall administer deductions for which the recognized employee organization shall defend, indemnify, and hold the trial court harmless.

(f) Every recognized employee organization that has agreed to an agency shop provision, or is a party to an agency shop arrangement, shall keep an adequate itemized record of its financial transactions and shall make available annually, to the trial court with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Disclosure Act of 1959 covering employees governed by this chapter or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the trial court with a copy of those financial reports.

(g) This section shall become operative only if Section 3502.5 is amended to provide that a 30-percent or greater showing of interest by means of a petition requires an election regarding an agency shop, and a vote at that election of 50 percent plus one of those voting secures an agency shop arrangement.

(h) A trial court may not offer employees inducements or benefits of any kind in return for employees opposing or rescinding an agency shop arrangement.

71632.6. Application of chapter to existing agency shop provisions

If the trial court is party to any memorandum of understanding or agreement with any bargaining unit that includes court employees that provides for an agency shop provision as of the implementation date of this chapter, the trial court and employee organization representing the trial court employees shall be obligated to honor the terms of the agency shop provision, including indemnification provisions, if any, for the duration of the memorandum of understanding or agreement. The implementation of this chapter shall not be a cause for a new agency shop election.

71633. Rights of recognized employee organizations; rights of employees to appear on their own behalf

Recognized employee organizations shall have the right to represent their members in their employment relations with trial courts as to matters covered by this article. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this article shall prohibit any employee from appearing on his or her own behalf regarding employment relations with the trial court.

71634. Scope of representation

(a) The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. However, the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

(b) In view of the unique and special responsibilities of the trial courts in the administration of justice, decisions regarding the following matters shall not be included within the scope of representation:

- (1) The merits and administration of the trial court system.
- (2) Coordination, consolidation, and merger of trial courts and support staff.
- (3) Automation, including, but not limited to, fax filing, electronic recording, and implementation of information systems.
- (4) Design, construction, and location of court facilities.

(5) Delivery of court services.

(6) Hours of operation of the trial courts and trial court system.

(c) The impact from matters in subdivision (b) shall be included within the scope of representation as those matters affect wages, hours, and terms and conditions of employment of trial court employees. The court shall be required to meet and confer in good faith with respect to that impact.

(d) The trial court shall continue to have the right to determine assignments and transfers of trial court employees; provided that the process, procedures, and criteria for assignments and transfers shall be included within the scope of representation.

71634.1. Notice and opportunity to meet requirements; emergencies

(a) Except in cases of emergency as provided in this section, the trial court shall give reasonable written notice to each recognized employee organization affected by any rule, practice, or policy directly relating to matters within the scope of representation proposed to be adopted by the trial court and shall give each such recognized employee organization the opportunity to meet with the trial court.

(b) In cases of emergency when the trial court determines that any rule, policy, or procedure must be adopted immediately without prior notice or meeting with a recognized employee organization, the trial court shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of the rule, policy, or procedure.

71634.2. Meet and confer requirements

(a) The trial court, or those representatives as it may designate, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment within the scope of representation, as defined in Section 71634, with representatives of the recognized employee organizations, as defined in Section 71611, and shall consider fully the presentations as are made by the recognized employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

(b) In fulfilling the requirements of subdivision (a), the court and the county may consult with each other, may negotiate jointly, and each may designate the other in writing as its agent on any matters within the scope of representation.

71634.3. Memorandum of agreement or understanding; presentation for determination

If agreement is reached by the representatives of the trial court and a recognized employee organization or organizations, they shall jointly prepare a written memorandum of the agreement or understanding, which shall not be binding, and present it to the trial court or its designee for determination.

71634.4. Failure to reach agreement; mediation

If after a reasonable period of time, representatives of the trial court and the recognized employee organization fail to reach agreement, the trial court and the recognized employee organization or recognized employee organizations together may agree upon the appointment of a mediator mutually agreeable to the parties. Costs of mediation, if any, shall be divided one-half to the trial court and one-half to the recognized employee organization or recognized employee organizations.

71635. Time off allowance to employee representatives

The trial court shall allow a reasonable number of trial court employee representatives of recognized employee organizations reasonable time off, without loss of compensation or other benefits, when formally meeting and conferring with representatives of the trial court on matters within the scope of representation.

71635.1. Discrimination prohibited

Trial courts and employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against court employees because of their exercise of their rights under Section 71631.

71636. Administration of employer-employee relations; adoption of rules and regulations

(a) A trial court may adopt reasonable rules and regulations, after consultation in good faith with representatives of a recognized employee organization or organizations, for the administration of employer-employee relations under this article. These rules and regulations may include provisions for:

(1) Verifying that an organization does in fact represent employees of the trial court.

- (2) Verifying the official status of employee organization officers and representatives.
- (3) Recognition of employee organizations.
- (4) Exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the trial court or an appropriate unit thereof, subject to the right of an employee to represent himself or herself as provided in Section 71631.
- (5) Additional procedures for the resolution of disputes involving wages, hours, and other terms and conditions of employment.
- (6) Access of employee organization officers and representatives to work locations.
- (7) Use of official bulletin boards and other means of communication by employee organizations.
- (8) Furnishing nonconfidential information pertaining to employment relations to employee organizations.
- (9) Any other matters as are necessary to carry out the purposes of this article.
- (b) Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of recognition.
- (c) No trial court shall unreasonably withhold recognition of employee organizations. A trial court may not offer to provide employees benefits of any kind for the purpose of inducing those employees to decertify or withdraw support from a recognized employee organization.
- (d) Pursuant to the obligation to meet and confer in good faith, the trial court shall establish procedures to determine the appropriateness of any bargaining unit of court employees.
- (e) Trial court employees and employee organizations shall be able to challenge a rule or regulation of a trial court as a violation of this chapter.

71636.1. Dispute resolution procedure

In the absence of local procedures for resolving disputes on the appropriateness of a unit of representation, upon the request of any of the parties, the dispute shall be submitted to the California State Mediation and Conciliation Service for the mediation or for recommendation for resolving the dispute.

71636.3. Unit determinations and representation elections; adoption of rules by trial court; bargaining unit; exclusive or majority representation

(a) Unit determinations and representation elections shall be determined and processed in accordance with rules adopted by a trial court in accordance with this chapter. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required.

(b) Notwithstanding subdivision (a) and rules adopted by a trial court pursuant to Section 71636, a bargaining unit in effect as of January 1, 2002, shall continue in effect unless changed under the rules adopted by the trial court pursuant to Section 71636.

(c) A trial court shall grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the representation, unless another labor organization has previously been lawfully recognized as exclusive or majority representative of all or part of the same unit. Exclusive or majority representation shall be determined by a neutral third party, selected by the trial court and the employee organization, who shall review the signed petition, authorization cards, or union membership cards to verify the exclusive or majority status of the employee organization. If the trial court and the employee organization cannot agree on a neutral third party, the California State Mediation and Conciliation Service shall be the neutral third party and shall verify the exclusive or majority status of the employee organization. If the neutral third party determines, based on a signed petition, authorization cards, or union membership cards, that a second labor organization has the support of at least 30 percent of the employees in the unit in which recognition is sought, the neutral third party shall order an election to establish which labor organization, if any, has majority status.

71637. Professional employees; representation

(a) For purposes of this article, professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of those professional employees. In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the California State Mediation and Conciliation Service for mediation or for recommendation for resolving the dispute.

(b) For the purpose of this section, “professional employees” means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys.

71637.1. Designation of management and confidential employees; restrictions on representation

For purposes of this article, in addition to those rules and regulations that a trial court may adopt pursuant to, and in the same manner as set forth in, Section 71636, any trial court may adopt reasonable rules and regulations providing for designation of the management and confidential employees of the trial court and restricting those employees from representing any employee organization that represents other employees of the trial court, on matters within the scope of representation. Except as specifically provided otherwise in this article, this section does not otherwise limit the right of employees to be members of, and to hold office in, an employee organization.

71638. Dues deductions

A trial court employee shall have the right to authorize a dues deduction from his or her salary or wages in the same manner provided to public agency employees pursuant to Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.

71639. Representatives of trial court employees; memorandum of understanding or agreements covering trial court employees; local rules, personnel rules, policies and practices; continuation of existing provisions

(a) As of the implementation date of this chapter, an employee organization that is recognized as a representative of a group of trial court employees or the exclusive

representative of an established bargaining unit of trial court employees, either by the county or the trial court, shall continue to be recognized by the trial court as a representative or the exclusive representative of the same trial court employees. A trial court and recognized employee organization shall be bound by the terms of any memorandum of understanding or agreement covering trial court employees to which the trial court or the county is a party that is in effect on the implementation date of this chapter for the duration thereof, or until it expires and, consistent with law, is replaced by a successor memorandum of understanding or agreement, subject to the obligation to meet and confer in good faith. Upon expiration of a memorandum of understanding or agreement, the trial court shall meet and confer in good faith with recognized employee organizations.

(b) A trial court's local rules governing trial court employees and a trial court's personnel rules, policies, and practices, and any county rules in effect pursuant to former Rule 2205 of the California Rules of Court as adopted on April 23, 1997, in effect at the time of the implementation date of this chapter, to the extent they are not contrary to or inconsistent with the obligations and duties provided for in this article, shall continue in effect until changed by the trial court. Prior to changing any rule, policy, or practice that affects any matter within the scope of representation as set forth in this article, the court shall meet and confer in good faith with the recognized employee organization as provided for in this chapter.

(c) Nothing contained in this article is intended to preclude trial court employees from continuing to be included in representation units which contain county employees.

71639.1 Public Employment Relations Board; powers and duties; unfair practice charges; enforcement of rules; management employees; violation of rule or regulation

(a) As used in this article, "board" means the Public Employment Relations Board established pursuant to Section 3541.

(b) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this article and shall include the authority as set forth in subdivisions (c) and (d). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a trial court has no rule.

(c) A complaint alleging any violation of this article or of any rules and regulations adopted by a trial court pursuant to Section 71636 shall be processed as an unfair practice

charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this article, shall be a matter within the exclusive jurisdiction of the board, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this article and Section 71639.3. The board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge, except that if the rules and regulations adopted by a trial court require exhaustion of a remedy prior to filing an unfair practice charge or the charging party chooses to exhaust a trial court's remedy prior to filing an unfair practice charge, the six-month limitation set forth in this subdivision shall be tolled during such reasonable amount of time it takes the charging party to exhaust the remedy, but nothing herein shall require a charging party to exhaust a remedy when that remedy would be futile.

(d) The board shall enforce and apply rules adopted by a trial court concerning unit determinations, representation, recognition, and elections.

(e) This section does not apply to employees designated as management employees under Section 71637.1.

(f) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a trial court if that rule or regulation is itself in violation of this article.

**71639.15. Appeal of administrative law judge decision regarding
recognition or certification of employee organization; final order
of board**

Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

71639.2. Application of Labor Code § 923

The enactment of this article shall not be construed as making Section 923 of the Labor Code applicable to trial court employees.

71639.3. Local public employee organizations; application to trial courts and trial court employees

Trial courts and trial court employees are not covered by Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, or any subsequent changes to these sections except as provided in this article. However, where the language of this article is the same or substantially the same as that contained in Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, it shall be interpreted and applied in accordance with the judicial interpretations of the same language.

71639.4 Petition for writ of extraordinary relief; filing; enforcement of final decision or order after expiration of time to petition

(a) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, and any party to a final decision or order of the board in a unit determination, representation, recognition, or election matter that is not brought as an unfair practice case, may petition for a writ of extraordinary relief from that decision or order. A board order directing an election may not be stayed pending judicial review.

(b) A petition for a writ of extraordinary relief shall be filed in the district court of appeal having jurisdiction over the county where the events giving rise to the decision or order occurred. The petition shall be filed within 30 days from the date of the issuance of the board's final decision or order, or order denying reconsideration, as applicable. Upon the filing of the petition, the court shall cause notice to be served upon the board and thereafter shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless that time is extended by the court for good cause shown. The court shall have jurisdiction to grant any temporary relief or restraining order it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the decision or order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil

Procedure relating to writs shall, except where specifically superseded by this section, apply to proceedings pursuant to this section.

(c) If the time to petition for extraordinary relief from a board decision or order has expired, the board may seek enforcement of any final decision or order in a district court of appeal or superior court having jurisdiction over the county where the events giving rise to the decision or order occurred. The board shall respond within 10 days to any inquiry from a party to the action as to why the board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the board's final decision or order, the board shall seek enforcement of the final decision or order upon the request of the party. The board shall file in the court the record of the proceeding, certified by the board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to the procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus or other proper process. The court may not review the merits of the order.

71639.5. Negotiations; written agreements; binding effect; enforcement; adoption of rules of court

(a) Any written agreements reached through negotiations held pursuant to this article are binding upon the parties, upon adoption under Section 71634.3, and, notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, any of those agreements may be enforced by petitioning the superior court for relief pursuant to Section 1085 or 1103 of the Code of Civil Procedure.

(b) Written agreements reached through negotiations held pursuant to this article that contain provisions requiring the arbitration of controversies arising out of the agreement shall be subject to enforcement under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(c) The Judicial Council shall adopt rules of court that shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear petitions under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, and writ applications under Sections 1085 and 1103 of the Code of Civil Procedure, and as specified in those rules, from which a single justice shall be assigned to hear the matter in the superior court. The rules of court shall provide that these matters shall be heard in the superior court, and to the extent permitted by law, shall provide that any justice assigned to hear the matter in the superior court shall not be from the court of

appeal district in which the action is filed, and shall further provide that appeals in such matters shall be heard in the court of appeal district where the matter was filed.

ARTICLE 4

EMPLOYMENT SELECTION AND ADVANCEMENT

71640. Establishment of system

(a) As of the implementation date of this chapter, each trial court shall establish a trial court employment selection and advancement system which shall become the minimum selection and advancement system for all trial court employees and shall become part of the sole trial court employee personnel system. The trial court employment selection and advancement system shall replace any county employment selection and advancement systems applying to trial court employees prior to the implementation date as provided in this article, except as otherwise specified in this article. This article establishes minimum standards, and each trial court employment selection and advancement system shall, at a minimum, conform to the requirements of this article.

(b) Until such time as a trial court establishes a trial court employment selection and advancement system as provided in this article, the minimum standards required pursuant to this article shall be the trial court employment selection and advancement system.

71641. Personnel rules; development

Each trial court shall develop personnel rules regarding hiring, promotion, transfer, and classification. Trial courts shall meet and confer in good faith with representatives of the recognized employee organizations on those rules that cover matters within the scope of representation. However, nothing in this article is intended to expand the definition of matters within the scope of representation, as defined in Section 71634.

71642. Hiring and promotion; standards

Hiring and promotion within a trial court shall be done in a nondiscriminatory manner based on job-related factors. Trial court personnel rules shall meet the following minimum standards:

(a) Recruiting, selecting, transferring, and advancing employees shall be on the basis of their relative ability, knowledge, and skills. Initial appointment shall be through an open, competitive process. Preference shall be given to internal candidates.

(b) Formal job-related selection processes are required when filling positions.

(c) Each trial court shall have an equal employment opportunity policy applying to all applicants and employees in accordance with applicable state and federal law.

71643. Positions excluded from competitive selection and promotion processes

(a) The following positions are excluded from the competitive selection and promotion processes required by Section 71642:

(1) Subordinate judicial officers.

(2) Managerial, confidential, temporary, and limited-term positions in accordance with a trial court's personnel policies, procedures, or plans, subject to meet and confer in good faith.

(b) If managerial, confidential, temporary, and limited-term positions are defined for the purposes of competitive selection and promotion processes within a trial court as of the implementation date of this chapter, then that definition shall be maintained for those purposes until changed subject to meet and confer in good faith. If managerial, confidential, temporary, and limited-term positions are not defined for the purposes of competitive selection and promotion processes within a trial court as of the implementation date of this chapter, then the adoption of any such definition by the trial court shall be subject to meet and confer in good faith.

(c) The exclusion of managerial, confidential, temporary, and limited term positions from required competitive selection and promotion processes shall not affect the employees' right to representation.

(d) Permanent or regular employees who assume limited term appointments or assignments to other positions or classes shall retain their permanent or regular status during and upon expiration of the limited term appointment or assignment.

71644. Dispute resolution

Disputes between a trial court and its employees regarding the alleged misapplication, misinterpretation, or violation of the trial court's rules enacted pursuant to Sections

71641 and 71642 governing hiring, promotion, transfer, and classification shall be resolved by binding arbitration.

71645. Application and effective date of Article

(a) On and after the implementation date of this chapter, this article shall become the employment, selection, and advancement system for all trial court employees within a trial court and shall become part of the sole trial court employee system, replacing any aspects of county employment, selection, and advancement systems applying to trial court employees prior to the implementation date of this chapter.

(b) Except as provided in subdivision (c), the implementation date of this chapter for each trial court shall be the effective date of this chapter.

(c) The representatives of the trial court and representatives of recognized employee organizations may mutually agree to a different implementation date. If the provisions in this article are governed by an existing memorandum of understanding or agreement covering trial court employees, as to such provisions, the implementation date shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement, unless representatives of the trial court and representatives of recognized employee organizations mutually agree otherwise.

**ARTICLE 5
EMPLOYMENT PROTECTION SYSTEM**

71650. Establishment of system

(a) As of the implementation date of this article, as provided in Section 71658, each trial court shall establish a trial court employment protection system that shall become the minimum employment protection system for all trial court employees and shall become part of the sole trial court employee personnel system. The trial court employment protection system shall replace any county employment protection systems applying to trial court employees prior to the implementation date provided in Section 71658, except as otherwise specified in this article. This article establishes minimum standards, and each trial court employment protection system shall, at a minimum, conform to the requirements of this article.

(b) Nothing in this article shall preclude the establishment of enhanced employment protection systems pursuant to trial court personnel policies, procedures, or plans subject to meet and confer in good faith.

(c) Nothing in this article shall be construed to provide, either explicitly or implicitly, a civil cause of action for breach of contract either express or implied arising out of a termination of employment.

(d) Except as specified in subdivisions (b) and (c), this article shall not apply to either of the following categories of trial court employees:

(1) Subordinate judicial officers.

(2) Managerial, confidential, temporary, limited term, and probationary employees, unless included within the trial court employment protection system in accordance with trial court personnel policies, procedures, or plans subject to meet and confer in good faith.

71651. Progressive discipline procedures

(a) The trial court employment protection system in each trial court shall include progressive discipline, as defined by each trial court's personnel policies, procedures, or plans, subject to meet and confer in good faith. Except for layoffs for organizational necessity as provided for in Section 71652, discipline, up to and including termination of employment, shall be for cause.

(b) For purposes of this section, "for cause" means a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power.

71652. Layoffs

(a) A trial court employee may be laid off based on the organizational necessity of the court. Each trial court shall develop, subject to meet and confer in good faith, personnel rules regarding procedures for layoffs for organizational necessity. Employees shall be laid off on the basis of seniority of the employees in the class of layoff, in the absence of a mutual agreement between the trial court and a recognized employee organization providing for a different order of layoff.

(b) For purposes of this section, a “layoff for organizational necessity” means a termination based on the needs or resources of the court, including, but not limited to, a reorganization or reduction in force or lack of funds.

71653. Review of disciplinary decisions; evidentiary due process hearings

Subject to meet and confer in good faith, each trial court shall establish in its personnel rules a process for conducting an evidentiary due process hearing to review disciplinary decisions that by law require an evidentiary due process hearing, which shall include, at a minimum, all of the following elements:

(a) A procedure for appointment of an impartial hearing officer who shall not be a trial court employee or judge of the employing court.

(b) The hearing shall result in an appropriate record with a written report that has findings of fact and conclusions that reference the evidence.

(c) The employee and trial court shall have the right to call witnesses and present evidence. The trial court shall be required to release trial court employees to testify at the hearing.

(d) The hearing officer shall have the authority to issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents, and other evidence as provided in Section 1282.6 of the Code of Civil Procedure.

(e) The employee shall have the right to representation, including legal counsel, if provided by the employee.

(f) If the hearing officer disagrees with the trial court’s disciplinary decision, the trial court shall furnish a certified copy of the record of proceedings before the hearing officer to the employee or, if the employee is represented by a recognized employee organization or counsel, to that representative, without cost.

71654. Review of hearing officer’s report and recommendation

Subject to meet and confer in good faith, each trial court shall establish in its personnel rules a process for the trial court to review a hearing officer’s report and recommendation made pursuant to Section 71653 that provides, at a minimum, that the decision of the hearing officer shall be subject to review, as follows:

(a) A trial court shall have 30 calendar days from receipt of the hearing officer's report or receipt of the record of the hearing, whichever is later, to issue a written decision accepting, rejecting or modifying the hearing officer's report or recommendation unless the trial court and employee mutually agree to a different timeframe.

(b) In making its decision under subdivision (a), the trial court shall be bound by the factual findings of the hearing officer, except factual findings that are not supported by substantial evidence, and the trial court shall give substantial deference to the recommended disposition of the hearing officer.

(c) If the trial court rejects or modifies the hearing officer's recommendation, the trial court shall specify the reason or reasons why the recommended disposition is rejected in a written statement which shall have direct reference to the facts found and shall specify whether the material factual findings are supported by substantial evidence. The trial court may reject or modify the recommendation of the hearing officer only if the material factual findings are not supported by substantial evidence, or for any of the following reasons or reasons of substantially similar gravity or significance:

(1) The recommendation places an employee or the public at an unacceptable risk of physical harm from an objective point of view.

(2) The recommendation requires an act contrary to law.

(3) The recommendation obstructs the court from performing its constitutional or statutory function from an objective point of view.

(4) The recommendation disagrees with the trial court's penalty determination, but the hearing officer has not identified material, substantial evidence in the record that provides the basis for that disagreement.

(5) The recommendation is contrary to past practices in similar situations presented to the hearing officer that the hearing officer has failed to consider or distinguish.

(6) From an objective point of view, and applied by the trial court in a good faith manner, the recommendation exposes the trial court to present or future legal liability other than the financial liability of the actual remedy proposed by the hearing officer.

(d) If a trial court's review results in rejection or substantial modification of the hearing officer's recommendation, then the final review shall be conducted by an individual other than the disciplining officer. If the disciplining officer is a judge of the trial

court, the review shall be made by another judge of the court, a judicial committee, an individual, or panel as specified in the trial court's personnel rules. However, in a trial court with two or fewer judges, if the trial court has no other judge than the disciplining judge or judges, the judge or judges may conduct the review; and, as a minimum requirement, in a trial court with 10 or more judges, the review shall be by a panel of three judges, whose decision shall be by a majority vote, which shall be selected as follows:

- (1) One judge shall be selected by the presiding judge or his or her designee.
- (2) One judge shall be selected by the employee or, if the employee is represented, by his or her bargaining representative.
- (3) The two appointed judges shall select a third judge. On panels in a trial court with 10 or more judges, no judge may be selected to serve without his or her consent; the term of office of the panel shall be defined by local personnel policies, procedures, or plans subject to the obligation to meet and confer in good faith; and no judge shall serve on the panel in a case in which he or she has imposed discipline.

71655. Review of decision of disciplining trial courts

(a) An employee may challenge the decision of the disciplining trial court, made pursuant to Section 71654, rejecting or modifying the hearing officer's recommendation by filing a writ of mandamus pursuant to Section 1094.5 of the Code of Civil Procedure in the appropriate court, and such review by that court shall be based on the entire record. If required by the writ procedure and if not previously provided to the disciplined employee, the disciplining court shall furnish a certified copy of the record of the proceeding before the hearing officer to the disciplined employee or, if the employee is represented, to the bargaining representative without charge. In reviewing the disciplining trial court's rejection or modification of the hearing officer's recommendation, the reviewing court shall be bound by the hearing officer's material factual findings that are supported by substantial evidence.

(b) The denial of due process or the imposition of a disciplinary decision that by law requires a due process hearing without holding the required hearing may be challenged by a petition for a writ of mandate.

71656. County of first class as defined in § 28022; application of evidentiary due process procedures; elections to be subject to trial court employment protection system

Notwithstanding any other provision of this article, in a county of the first class as defined in Section 28022 as of January 1, 2001:

(a) As of the implementation date provided in Section 71658, a trial court employee who was a member of a county civil service system shall remain in that system for the sole purposes of evidentiary due process hearings before the county civil service commission as an alternative to the due process hearings provided for in Sections 71653, 71654, and 71655, unless the employee elects, pursuant to subdivision (c), to be subject to the trial court employment protection system provided in this article.

(b) One year after the implementation date provided in Section 71658, a trial court employee who was a member of a county civil service system shall be deemed to have elected, pursuant to subdivision (c), to be subject to the trial court employment protection system provided in this article unless the employee has, during that year, submitted to the trial court a signed writing expressly electing the county civil service commission solely for the purposes of evidentiary due process hearings in lieu of the hearings provided for in Sections 71653, 71654, and 71656. However, no election may be made after receiving notice of intended discipline until after the disciplinary action has been finally resolved and the employee has exhausted all remedies related to that action. The one-year period in which to elect the county civil service commission shall be tolled during the period of time when a trial court employee is disabled from making an election because of pending disciplinary action or proceedings.

(c) A trial court employee who is subject to the county civil service system may elect at any time to be subject to the trial court employment protection system provided in this article, except that no election may be made after receiving notice of intended discipline until after the disciplinary action has been finally resolved and the employee has exhausted all remedies related to that action. An election to be subject to the trial court employment protection system may not be revoked.

(d) A trial court employee who elects to remain in the county civil service system and who later is promoted or transferred into a position that is comparable to a position that is classified as exempt from the county civil service system shall be subject to the trial court employment protection system for all purposes.

(e) Trial court employees in a county of the first class eligible for making an election pursuant to subdivisions (a) and (b) shall be deemed county employees for purposes of remaining eligible for evidentiary due process hearings before the county civil service commission.

(f) A trial court shall adopt procedures, subject to meet and confer in good faith, that establish a process for election pursuant to this section.

71657. Disciplinary actions served prior to implementation date of Chapter

(a) Disciplinary action served on a trial court employee prior to the implementation date of this chapter shall remain in effect in accordance with the procedures established under the trial court's predecessor personnel system.

(b) Appeals of disciplinary action served on a trial court employee prior to the implementation date of this chapter shall be made in accordance with the procedures established under the trial court's predecessor personnel system. Appeals of disciplinary action served on a trial court employee after the implementation date of this chapter shall be made in accordance with the procedures established pursuant to this article. The consequences of past discipline under the trial court's new employment protection system pursuant to this article shall be subject to meet and confer in good faith.

71658. Implementation date of Article

(a) Except as provided in subdivision (b), the implementation date of this article is the effective date of this chapter.

(b) Representatives of a trial court and representatives of recognized employee organizations may mutually agree to an implementation date of this article different from that specified in subdivision (a). However, if any provisions of this chapter are governed by an existing memorandum of understanding or agreement covering trial court employees, as to those provisions, the implementation date shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement unless representatives of the trial court and representatives of recognized employee organizations mutually agree otherwise.

ARTICLE 6 PERSONNEL FILES

71660. Adoption of personnel rules

Each trial court shall adopt personnel rules, subject to the obligation to meet and confer in good faith, to provide trial court employees with access to their official personnel files. The rules shall provide, at a minimum, that all of the following applies:

- (a) Each trial court shall, at reasonable times and intervals, permit an employee, upon that employee's request, to inspect any personnel files that are used, or have been used, to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.
- (b) Each trial court shall keep a copy of each employee's official personnel files at the place where the employee reports to work, or shall make the official personnel files available where the employee reports to work within a reasonable period of time after a request for the official personnel files by the employee.
- (c) Records of a trial court employee relating to the investigation of a possible criminal offense, letters of reference, and other matters protected by constitutional, statutory, or common law provisions, shall be excluded from the personnel files for purposes of this section.

ARTICLE 7 RELATION TO OTHER TRIAL COURT STATUTES

71670. Brown-Presley Trial Court Funding Act; application of chapter

Nothing in this chapter shall be construed to affect the provisions of the Brown-Presley Trial Court Funding Act (Chapter 13 (commencing with Section 77000) of Title 8) or to impose upon the Judicial Council or the state any obligation to make an allocation to a trial court to fund expenses or obligations incurred by the trial court pursuant to this chapter.

71671. Employment protection system provisions

Notwithstanding any other provision of law, each trial court employee shall have the protections provided for in Article 5 (commencing with Section 71650) of this chapter, except as otherwise provided by this chapter.

71672. Hiring, classification and compensation provisions

Notwithstanding any other provision of law, each trial court employee shall be entitled to such benefits as are provided for in Article 2 (commencing with Section 71620) of this chapter.

71673. Authority and powers of trial courts; hiring, classification and compensation

Notwithstanding any other provision of law, the trial court may exercise the authority and power granted to it pursuant to Article 2 (commencing with Section 71620) of this chapter, including, but not limited to, the authority and power to establish job classifications, to appoint such employees as are necessary, to establish salaries for trial court employees, and to arrange for the provision of benefits for trial court employees, without securing the approval or consent of the county or the board of supervisors, and without requiring any further legislative action, except as otherwise provided by this chapter.

71674. Obsolete provisions; duties of California Law Revision Commission

The California Law Revision Commission shall determine whether any provisions of law are obsolete as a result of the enactment of this chapter, the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Chapter 850 of the Statutes of 1997), or the implementation of trial court unification, and shall recommend to the Legislature any amendments to remove those obsolete provisions. The commission shall report its recommendations to the Legislature, including any proposed statutory changes.

71675. Allegation of Court Rule 6.702 violation concerning the release of and access to budget and management information concerning the Judicial Council or the trial courts; procedure and hearing

(a) Any trial court may adopt a procedure to be used as a preliminary step before petitioning the superior court for relief pursuant to subdivision (b) in matters concerning the release of information by that trial court. The Judicial Council may adopt a procedure to be used as a preliminary step before petitioning the superior court for relief pursuant to subdivision (b) in matters concerning the release of information by the Judicial Council.

(b) Notwithstanding Sections 1085 and 1003 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, in the event that a trial court employee, an employee organization, or a member of the public believes there has been a violation of Rule 10.802 of the California Rules of Court concerning the maintenance of, and public access to, budget and management information concerning the Judicial Council or the trial courts, that party may petition the superior court for relief.

(c) The Judicial Council shall adopt rules of court to implement this hearing and appeal process. The rules of court shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear these matters, as specified in the rules of court, from which panel a single justice shall be assigned to hear the matter in the superior court. The rules of court shall provide that these matters shall be heard in the superior court, and, if applicable, the court of appeal, on an expedited basis. To the extent permitted by law or rule of court, these rules shall provide that the justice assigned to hear the matter shall not be from the court of appeal district in which the action is filed, and shall provide that appeals in these matters shall be heard in the court of appeal district where the matter was filed.

**GOVERNMENT CODE
TITLE 8, CHAPTER 7.5
TRIAL COURT INTERPRETER EMPLOYMENT
AND LABOR RELATIONS ACT**

71800. Short title

This chapter shall be known and may be cited as the Trial Court Interpreter Employment and Labor Relations Act.

71801. Definitions

For purposes of this chapter, the following definitions shall apply:

- (a) “Certified interpreter” and “registered interpreter” have the same meanings as in Article 4 (commencing with Section 68560) of Chapter 2. This chapter does not apply to sign language interpreters.
- (b) “Cross-assign” and “cross-assignment” refer to the appointment of a court interpreter employed by a trial court to perform spoken language interpretation services in another trial court, pursuant to Section 71810.
- (c) “Employee organization” means a labor organization that has as one of its purposes representing employees in their relations with the trial courts.
- (d) “Mediation” means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the trial court or regional court interpreter committee and the recognized employee organization through interpretation, suggestion, and advice.
- (e) “Meet and confer in good faith” means that a trial court or regional court interpreter committee or those representatives it may designate, and representatives of a recognized employee organization, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process shall include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter, or when the procedures are used by mutual consent.

(f) “Personnel rules,” “personnel policies, procedures, and plans,” and “rules and regulations” mean policies, procedures, plans, rules, or regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

(g) “Recognized employee organization” means an employee organization that has been formally acknowledged to represent the court interpreters employed by the trial courts in a region, pursuant to this chapter.

(h) “Regional court interpreter employment relations committee” means the committee established pursuant to Section 71807.

(i) “Regional transition period” means the period from January 1, 2003, to July 1, 2005, inclusive, except that the transition period for the region may be terminated earlier by a memorandum of understanding or agreement between the regional court interpreter employment relations committee and a recognized employee organization.

(j) “Transfer” means transfer within the trial court as defined in the trial court’s personnel policies, procedures, and plans, subject to meet and confer in good faith.

(k) “Trial court” means the superior court in each county.

71802. Interpreters; trial court employees; independent contractors

(a) On and after July 1, 2003, trial courts shall appoint trial court employees, rather than independent contractors, to perform spoken language interpretation of trial court proceedings. An interpreter may be an employee of the trial court or an employee of another trial court on cross-assignment.

(b) Notwithstanding subdivision (a), a trial court may appoint an independent contractor to perform spoken language interpretation of trial court proceedings if one or more of the following circumstances exists:

(1) An interpreter who is not registered or certified is appointed on a temporary basis pursuant to Rule 984.2 of the California Rules of Court.

(2) The interpreter is over 60 years of age on January 1, 2003, or the sum of the interpreter’s age in years on January 1, 2003, and the number of years the interpreter has provided services to the trial courts as an independent contractor prior to January 1, 2003, is equal to or greater than 70, the interpreter has provided services to the trial

courts as an independent contractor prior to January 1, 2003, and the interpreter requests in writing prior to June 1, 2003, the opportunity to perform services for the trial court as an independent contractor rather than as an employee.

(3) The interpreter is paid directly by the parties to the proceeding.

(4) The interpreter has performed services for the trial courts as an independent contractor prior to January 1, 2003, the interpreter notifies the trial court in writing prior to June 1, 2003, that the interpreter is precluded from accepting employment because of the terms of an employment contract with a public agency or the terms of a public employee retirement program, the interpreter provides supporting documentation, and the interpreter requests in writing the opportunity to perform services for the trial court as an independent contractor rather than an employee.

(c) Notwithstanding subdivisions (a) and (b), and unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, a trial court may also appoint an independent contractor on a day-to-day basis to perform spoken language interpretation of trial court proceedings if all of the following circumstances exist:

(1) The trial court has assigned all the available employees and independent contractors appointed pursuant to paragraphs (2) and (4) of subdivision (b) in the same language pair and has need for additional interpreters. Employees and independent contractors who are appointed pursuant to paragraphs (2) and (4) of subdivision (b) shall be given priority for assignments over independent contractors who are appointed pursuant to this subdivision.

(2) The interpreter has not previously been appointed as an independent contractor by the same trial court on more than 100 court days or parts of court days during the same calendar year, except that the trial court may continue to appoint an independent contractor on a day-to-day basis to complete a single court proceeding, if the trial court determines that the use of the same interpreter to complete that proceeding is necessary to provide continuity. An interpreter who has been appointed by a trial court as an independent contractor pursuant to this subdivision on more than 45 court days or parts of court days during the same calendar year shall be entitled to apply for employment by that trial court as a court interpreter pro tempore and the trial court may not refuse to offer employment to the interpreter, except for cause. For purposes of this section, "for cause" means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(3) The trial court does not provide independent contractors appointed pursuant to this subdivision with lesser duties or more favorable working conditions than those to which a court interpreter pro tempore employed by that trial court would be subject for the purpose of discouraging interpreters from applying for pro tempore employment with the trial court. The trial court is not required to apply the employee training, disciplinary, supervisory, and evaluation procedures of the trial court to any independent contractor.

(d) Only registered and certified interpreters may be hired by a trial court as employees to perform spoken language interpretation of trial court proceedings. Interpreters who are not certified or registered may be assigned to provide services as independent contractors only when certified and registered interpreters are unavailable and the good cause and qualification procedures and guidelines adopted by the Judicial Council pursuant to subdivision (c) of Section 68561 have been followed.

(e) A trial court that has appointed independent contractors pursuant to paragraph (1) of subdivision (b) or to subdivision (c) for a language pair on more than 60 court days or parts of court days in the prior 180 days shall provide public notice that the court is accepting applications for the position of court interpreter pro tempore for that language pair and shall offer employment to qualified applicants.

(f) Unless the parties to the dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes concerning a violation of this section shall be submitted for binding arbitration to the California State Mediation and Conciliation Service.

71803. Court interpreter pro tempore employee classification

(a) In each trial court, there shall be a new employee classification entitled “court interpreter pro tempore” to perform simultaneous and consecutive interpretation and sight translation in spoken languages for the trial courts. Unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, all of the following applies to employees in this classification:

(1) They shall be appointed by the trial court to perform work on an as needed basis.

(2) They shall be paid on a per diem basis for work performed.

(3) They are not required to receive health, pension, or paid leave benefits.

(b) Court interpreters pro tempore may accept appointments to provide services in other trial courts pursuant to Section 71810.

(c) Unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, no rules and regulations or personnel rules shall limit the number of hours or days court interpreters pro tempore are permitted to work.

71804. Court interpreter pro tempore; required job offers

(a) Each trial court shall offer to employ as a court interpreter pro tempore each interpreter who meets all of the following criteria:

(1) The interpreter is certified or registered.

(2) The interpreter has provided services to the same trial court as an independent contractor on at least either:

(A) Thirty court days or parts of court days in both calendar year 2001 and calendar year 2002.

(B) Sixty court days or parts of court days in calendar year 2002.

(3) The interpreter has applied for the position of court interpreter pro tempore prior to July 1, 2003, and has complied with reasonable requirements for submitting an application and providing documentation.

(4) The interpreter's application is not rejected by the trial court for cause.

(b) Each trial court shall begin accepting applications for court interpreters pro tempore by no later than May 1, 2003. Court interpreters who qualify for employment pursuant to this section shall receive offers of employment within 30 days after an application is submitted. Applicants shall have at least 15 days to accept or reject an offer of employment. The hiring process for applicants who accept the offer of employment shall be completed within 30 days after acceptance, but the trial court need not set employment to commence prior to July 1, 2003.

(c) For purposes of this section, "for cause" means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(d) Unless the parties to a dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes about whether this section has been violated during the regional transition period shall be resolved by binding arbitration through the California State Mediation and Conciliation Service.

71804.5. Court interpreter pro tempore; additional hiring; cross-assignments

(a) After a trial court has considered applications under Section 71804, the trial court may hire additional court interpreters pro tempore pursuant to the personnel rules of the trial court.

(b) A court interpreter pro tempore may not be an employee of more than one trial court, but may accept appointments to provide services to more than one trial court through cross-assignments.

71805. Regional transition period

(a) Until the conclusion of the regional transition period, all interpreters who are employed by a trial court shall be classified as court interpreters pro tempore, except as provided in Section 71828, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization.

(b) This chapter does not require trial courts to alter their past practices regarding the assignment of interpreters. If an interpreter had a regular assignment for the trial court as an independent contractor prior to the effective date of this chapter, nothing in this chapter shall prohibit the trial court from continuing to appoint the same interpreter to the same assignment as a court interpreter pro tempore during the regional transition period.

(c) During the regional transition period, the existing statewide per diem pay rate may not be reduced, and the existing statewide compensation policies set by the Judicial Council shall be maintained, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization. The per diem pay rate and compensation policies shall apply to court interpreters pro tempore.

(d) Court interpreters pro tempore are not subject to disciplinary action during the regional transition period, except for cause.

(e) For purposes of this section, “for cause” means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(f) During the regional transition period, a trial court may not retaliate or threaten to retaliate against a court interpreter or applicant for interpreter employment because of the individual’s membership in an interpreter association or employee organization, participation in any grievance, complaint, or meet and confer activities, or exercise of rights under this chapter, including by changing past practices regarding assignments, refusing to offer work to an interpreter, altering working conditions, or otherwise coercing, harassing, or discriminating against an applicant or interpreter.

(g) Unless the parties to a dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes about whether this section has been violated shall be resolved by binding arbitration through the California State Mediation and Conciliation Service.

71806. Court interpreters; hiring

(a) At the conclusion of the regional transition period, trial courts in the region may employ certified and registered interpreters to perform spoken language interpretation for the trial courts in full-time or part-time court interpreter positions created by the trial courts with the authorization of the regional committee and subject to meet and confer in good faith. The courts may also continue to employ court interpreters pro tempore.

(b) For purposes of hiring interpreters for positions other than court interpreters pro tempore, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, trial courts shall consider applicants in the following order of priority:

(1) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 150 court days or parts of court days during each of the past five years, including time spent performing work for the trial court as an independent contractor.

(2) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 60 court days or parts of court days in each of the past five years, including time spent performing work for the trial court as an independent contractor.

(3) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 60 court days or parts of court days in at least two of the past four years, including time spent as an independent contractor.

(4) Other applicants.

(c) A trial court may not reject an applicant in favor of an applicant with lower priority except for cause.

(d) For purposes of this section, “for cause” means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(e) Applicants may be required to provide sufficient documentation to establish that they are entitled to priority in hiring. Trial courts shall make their records of past assignments available to interpreters for purposes of obtaining that documentation.

(f) Unless the parties to a dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes about whether this section has been violated shall be resolved by binding arbitration through the California State Mediation and Conciliation Service.

(g) Subdivision (b) shall become inoperative on January 1, 2007, unless otherwise provided by a memorandum of understanding or agreement with a recognized employee organization, and on and after that time hiring shall be in accordance with the personnel rules of the trial court.

71807. Regions; court interpreter employment relations committees

(a) For purposes of developing regional terms and conditions of employment for court interpreters and for collective bargaining with recognized employee organizations, the trial courts are divided into four regions, as follows:

(1) Region 1: Los Angeles, Santa Barbara, and San Luis Obispo Counties.

(2) Region 2: Counties of the First and Sixth Appellate Districts, except Solano County.

(3) Region 3: Counties of the Third and Fifth Appellate Districts.

(4) Region 4: Counties of the Fourth Appellate District.

(b) The Judicial Council shall adopt rules for the creation and operation of a regional court interpreter employment relations committee for each region, composed of representatives chosen by the trial courts within the region.

(c) The Judicial Council may divide each region into smaller subregions for purposes of coordinating the cross-assignment of court interpreters.

71808. Terms and conditions of employment

The regional court interpreter employment relations committee shall set terms and conditions of employment for court interpreters within the region, subject to meet and confer in good faith. These terms and conditions of employment, when adopted by the regional committee, shall be binding on the trial courts within the region. Compensation shall be uniform throughout the region. Unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, other terms and conditions of employment shall be uniform throughout the region, except that health and welfare and pension benefits may be the same as those provided to other employees of the same trial court.

71809. Bargaining representative for trial courts

The regional court interpreter employment relations committee shall act as the representative of the trial courts within the region in bargaining with a recognized employee organization. A memorandum of understanding or agreement ratified by the regional court interpreter employment relations committee shall be considered a binding agreement with each trial court within the region.

71810. Cross-assignments

(a) A court interpreter pro tempore employed by a trial court may accept appointments to provide services to other trial courts.

(b) The Judicial Council shall adopt procedures to facilitate the efficient cross-assignment of court interpreters.

(c) Based on an assessment of interpreter use and current practices, trial courts may create new employee positions for court interpreters to perform spoken language

interpretation for the trial courts in classifications other than court interpreter pro tempore. Some of these positions may include, as part of the duties of the position, the requirement that the interpreter accept cross-assignments, as defined in Section 71801, under procedures adopted by the Judicial Council, and some positions may make the acceptance of cross-assignments optional. Court interpreters pro tempore, and other interpreters who have not accepted employment in a position requiring the interpreter to accept cross-assignments, may not be disciplined for declining a cross-assignment.

(d) The impact of cross-assignments shall be included within the scope of representation as those matters affect wages, hours, and terms and conditions of employment of court interpreters. The regional court interpreter employment relations committee shall be required to meet and confer in good faith with respect to that impact.

(e) A court interpreter on cross-assignment shall be treated for purposes of compensation, employee benefits, seniority, and discipline and grievance procedures, as having performed the services in the trial court in which the interpreter is employed.

(f) Court interpreters on cross-assignment shall be reimbursed for mileage and other travel expenses at the same rates as other judicial branch employees.

71811. Personnel rules

Except as provided in this chapter, or by a memorandum of understanding or agreement with a recognized employee organization, court interpreters who are employed by a trial court shall be subject to the same personnel rules as other employees of the trial court, subject to meet and confer in good faith.

71812. Trial court; control of court interpreter's work

Except as provided in this chapter, or by a memorandum of understanding or agreement with a recognized employee organization, each trial court may control the manner and means of the work performed by court interpreters employed by the trial court and may hire, supervise, discipline, and terminate employment of those court interpreters in accordance with the personnel rules of the trial court, including applicable employee protections and dispute resolution mechanisms.

71812.5. Other employment; prohibited conduct

(a) Court interpreters employed by the trial courts shall be permitted to engage in outside employment or enterprises, except where that activity would violate the professional conduct requirements set forth in Rule 984.4 of the California Rules of Court, would interfere with the employee's performance of his or her duties for the trial courts, or would be incompatible, inconsistent, or in conflict with the duties performed by the employee for the trial courts.

(b) Unless the parties consent, an interpreter may not be appointed by the trial court to interpret in a proceeding after having previously interpreted on behalf of one of the parties, rather than on behalf of the court, in that same matter. An interpreter shall disclose that type of prior involvement to the trial court.

(c) An interpreter employed by a trial court is prohibited from doing any of the following:

(1) Receiving or accepting, directly or indirectly, a gift, including money, service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or seeking to do business of any kind with the trial court or whose activities are regulated or controlled in any way by the trial court, under circumstances from which it reasonably could be inferred that the gift was intended to influence the employee in the performance of his or her official duties or was intended as a reward for official action of the employee.

(2) Using confidential information acquired by virtue of trial court employment for the employee's private gain or advantage, or for the private gain or advantage of another, or to the employer's detriment.

(3) Using trial court facilities, equipment, or supplies for personal gain or advantage or for the private gain or advantage of another.

(4) Using the prestige or influence of trial court office or employment for personal gain or advantage or advantage of another.

(5) Using the trial court's electronic mail facilities to communicate or promote personal causes or gain.

71813. Employee organizations

Except as otherwise provided by statute, court interpreters employed by the trial courts shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Court interpreters employed by the trial courts also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the trial courts.

71814. Agency shop agreements

(a) Notwithstanding any other provision of law, rule, or regulation, an agency shop agreement may be negotiated between a regional court interpreter employment relations committee and a recognized employee organization. As used in this chapter, “agency shop” means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of that organization for the duration of the agreement or for a period of three years from the effective date of the agreement, whichever comes first. However, any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting recognized employee organizations may not be required to join or financially support any recognized employee organization as a condition of employment. That employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees to pay sums equal to those dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable organization fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three funds, designated in a memorandum of understanding or agreement between the regional committee and the recognized employee organization, or if the memorandum of understanding or agreement fails to designate any funds, then to any fund chosen by the employee. Proof of those payments shall be made on a monthly basis to the trial court as a condition of continued exemption from the requirement of financial support to the recognized employee organization.

(b) An agency shop provision in a memorandum of understanding or agreement which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding or agreement, if all of the following are satisfied:

(1) A request for the vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit.

(2) The vote is by secret ballot.

(3) The vote is taken at any time during the term of the memorandum of understanding or agreement. No more than one vote may be taken during that term.

(c) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the regional court interpreter employment relations committee and a recognized employee organization or recognized employee organizations shall be placed in effect upon (1) a signed petition of at least 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. An election under this subdivision may not be held more frequently than once a year, and shall be conducted by the Division of Conciliation of the Department of Industrial Relations in the event the regional court interpreter employment relations committee and the recognized employee organization cannot agree within 10 days from the filing of a petition to select jointly a neutral person or entity to conduct the election. The recognized employee organization shall hold the regional court interpreter employment relations committee and the trial courts harmless and defend and indemnify the regional court interpreter employment relations committee and trial courts regarding the application of any agency shop requirements or provisions, including, but not limited to, improper deduction of fees, maintenance of records, and improper reporting.

(d) Notwithstanding subdivisions (a), (b), and (c), the regional court interpreter employment relations committee and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on any agency shop agreement.

(e) An agency shop agreement may not apply to management, confidential, or supervisory employees.

(f) Every recognized employee organization that has agreed to an agency shop provision, or is a party to an agency shop arrangement, shall keep an adequate itemized record of its financial transactions and shall make available annually, to the regional court interpreter employment relations committee with which the agency shop provision was negotiated, and to the employees who are members of the organization,

within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Reporting and Disclosure Act of 1959 (Griffin-Landrum Act), covering employees governed by this chapter or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the trial court with a copy of those financial reports.

71815. Employee organizations; right of representation; membership

A recognized employee organization shall have the right to represent its members in their employment relations with the trial courts as to matters covered by this chapter. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this chapter shall prohibit any employee from appearing on his or her own behalf regarding employment relations.

71816. Scope of representation; exceptions

(a) The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. However, the scope of representation may not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

(b) In view of the unique and special responsibilities of the trial courts in the administration of justice, decisions regarding any of the following matters may not be included within the scope of representation:

- (1) The merits and administration of the trial court system.
- (2) Coordination, consolidation, and merger of trial courts and support staff.
- (3) Automation, including, but not limited to, fax filing, electronic recording, and implementation of information systems.
- (4) Design, construction, and location of court facilities.
- (5) Delivery of court services.

(6) Hours of operation of the trial courts and trial court system.

(c) The impact from matters in subdivision (b) shall be included within the scope of representation as those matters affect wages, hours, and terms and conditions of employment of court interpreters. The regional court interpreter employment relations committee shall be required to meet and confer in good faith with respect to that impact.

(d) The trial courts have the right to determine assignments and transfers of court interpreters, provided that the process, procedures, and criteria for assignments and transfers are included within the scope of representation.

71817. Notice of rules, practices, and policies from employment relations committee to employee organization

(a) Except in cases of emergency, as provided in this section, the regional court interpreter employment relations committee shall give reasonable written notice to a recognized employee organization affected by any rule, practice, or policy directly relating to matters within the scope of representation proposed to be adopted by the regional court interpreter employment relations committee, and shall give that recognized employee organization the opportunity to meet with the committee.

(b) In cases of emergency when the regional court interpreter employment relations committee determines that any rule, policy, or procedure must be adopted immediately without prior notice or meeting with a recognized employee organization, the regional court interpreter employment relations committee shall provide a notice and opportunity to meet at the earliest practicable time following the adoption of the rule, policy, or procedure.

71818. Meet and confer

The regional court interpreter employment relations committee, or those representatives as it may designate, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment within the scope of representation, as defined in this chapter, with representatives of the recognized employee organizations, and shall consider fully the presentations that are made by the recognized employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

71819. Memorandum of understanding or agreement

If agreement is reached by the representatives of the regional court interpreter employment relations committee and a recognized employee organization, they shall jointly prepare a written memorandum of understanding or agreement, which is not binding, and present it to the regional court interpreter employment relations committee or its designee for ratification.

71820. Mediation

If after a reasonable period of time, representatives of the regional court interpreter employment relations committee and the recognized employee organization fail to reach agreement, the regional court interpreter employment relations committee and the recognized employee organization together may agree upon the appointment of a mediator mutually agreeable to the parties. Costs of mediation, if any, shall be divided one-half to the trial courts within the region and one-half to the recognized employee organization.

71821. Employee representatives; time off

The trial courts shall allow a reasonable number of court interpreter employee representatives of a recognized employee organization reasonable time off, without loss of compensation or other benefits, when formally meeting and conferring with representatives of the regional court interpreter employment relations committee on matters within the scope of representation.

71822. Prohibited conduct

The trial courts, the regional court interpreter employment relations committee, and employee organizations may not interfere with, intimidate, restrain, coerce, harass, or discriminate against applicants for interpreter employment or interpreter employees because of their membership in an interpreter association or employee organization, because of their participation in any grievance, complaint, or meet and confer activities, or for the exercise of any other rights granted to interpreter employees under this chapter.

71823. Rules and regulations

(a) On or before April 1, 2003, the regional court interpreter employment relations committee shall adopt reasonable rules and regulations for the administration of

employer-employee relations under this chapter, which shall be binding on the trial courts within the region. These rules shall include provisions for all of the following:

(1) Verification that an organization represents employees of the trial courts within the applicable region.

(2) Verification of the official status of employee organization officers and representatives.

(3) Registration of employee organizations and recognition of these organizations as representatives of interpreters employed by the trial courts in the region.

(4) Establishment of a single, regional bargaining unit of all court interpreters employed by the trial courts in the region, including court interpreters pro tempore.

(5) Recognition of an employee organization as the exclusive representative of all court interpreters employed by the trial courts in the region, subject to the right of a court interpreter to represent himself or herself, as provided in Section 71813, upon either of the following:

(A) Presentation of a petition or cards with the signatures of 50 percent plus one of the court interpreters employed by the trial courts in the region during the payroll period immediately prior to the presentation of the cards or petition, including court interpreters pro tempore, regardless of whether they have been appointed to interpret during that payroll period, if they have worked for the trial courts as independent contractors or employees for at least 15 days in the six months prior to the filing of the petition or cards with those signatures having been obtained within one year prior to presentation of the petition or cards. A signature shall be valid even if the interpreter was not yet an employee at the time the petition or card was signed if the interpreter had previously performed work for the trial courts as an independent contractor, provided that the signature was obtained no more than 90 days before the interpreter became an employee. The results of a request for recognition under this provision shall be certified within 10 days after presentation of the cards or petition.

(B) Receipt by the employee organization of 50 percent plus one of the votes cast at a secret ballot representation election conducted by mail. A representation election shall be held within 30 days after presentation of a 30-percent or greater showing of interest from employees eligible to vote in the representation election by means of a petition or cards supported by signatures obtained within one year prior to the presentation of the petitions or cards. A signature shall be valid even if the interpreter was not yet an

employee at the time the petition or card was signed if the interpreter had previously performed work for the trial courts as an independent contractor, provided that the signature was obtained no more than 90 days before the interpreter became an employee. All certified and registered interpreters employed by the trial courts in the payroll period immediately prior to the election, including court interpreters pro tempore, shall be eligible to vote in the election, regardless of whether they have been appointed to interpret during that payroll period, so long as they have worked for the trial courts as independent contractors or employees for at least 15 days in the six months prior to the filing of the petition or cards. A list of eligible voters shall be provided to the employee organization within 10 days after submission of the petition or cards. Certification of the results of a representation election shall occur within 30 days after the election is concluded.

(6) Procedures for the resolution of disputes involving wages, hours, and other terms and conditions of employment.

(7) Access of employee organization officers and representatives to work locations.

(8) Use of official bulletin boards and other means of communication by employee organizations.

(9) Furnishing nonconfidential information pertaining to employment relations to an employee organization.

(10) Revocation of recognition of an employee organization formally recognized as majority representative pursuant to a vote of the employees by a majority vote of the employees only after a period of not less than 12 months following the date of recognition. A vote shall be requested by a petition or cards signed by at least 30 percent of the employees within the bargaining unit, with those signatures having been obtained within one year prior to presentation of the petition or cards.

(11) Any other matters that are necessary to carry out the purposes of this chapter.

(b) If there is a recognized employee organization in the region, the regional court interpreter employment relations committee may amend the reasonable rules and regulations adopted pursuant to subdivision (a) by adopting reasonable rules and regulations, after meeting and conferring in good faith, for the administration of employer-employee relations under this chapter, which shall be binding on the trial courts within the region.

(c) Interpreters and recognized employee organizations shall be able to challenge a rule or regulation of the regional court interpreter employment relations committee or a trial court as a violation of this chapter.

71824. Dues deductions

A court interpreter may authorize a dues deduction from his or her salary or wages in the same manner provided to public agency employees pursuant to Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.

71825. Public Employment Relations Board; powers and duties; unfair practice charges; enforcement of rules; management employees; violation of rule or regulation

(a) As used in this section, “board” means the Public Employment Relations Board established pursuant to Section 3541.

(b) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (c) and (d). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a regional court interpreter employment relations committee has no rule.

(c) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a regional court interpreter employment relations committee pursuant to Section 71823 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter and subdivision (b) of Section 71826. The board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge, except that if the rules and regulations adopted by a regional court interpreter employment relations committee require exhaustion of a remedy prior to filing an unfair practice charge or the charging party chooses to exhaust a regional court interpreter employment relations committee’s remedy prior to filing an unfair practice charge, the

six-month limitation set forth in this subdivision shall be tolled during such reasonable amount of time it takes the charging party to exhaust the remedy, but nothing herein shall require a charging party to exhaust a remedy when that remedy would be futile.

(d) The board shall enforce and apply rules adopted by a regional court interpreter employment relations committee concerning unit determinations, representation, recognition, and elections.

(e) This section does not apply to employees designated as management employees.

(f) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a regional court interpreter employment relations committee if that rule or regulation is itself in violation of this chapter.

**71825.05. Appeal of administrative law judge decision regarding
recognition or certification of employee organization; final order
of board**

Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

**71825.1. Petition for writ of extraordinary relief; filing; enforcement of
final decision or order after expiration of time to petition**

(a) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, and any party to a final decision or order of the board in a unit determination, representation, recognition, or election matter that is not brought as an unfair practice case, may petition for a writ of extraordinary relief from that decision or order. A board order directing an election may not be stayed pending judicial review.

(b) A petition for a writ of extraordinary relief shall be filed in the district court of appeal having jurisdiction over the county where the events giving rise to the decision or order occurred. The petition shall be filed within 30 days from the date of the issuance of the board's final decision or order, or order denying reconsideration, as applicable. Upon the filing of the petition, the court shall cause notice to be served upon the board and thereafter shall have jurisdiction of the proceeding. The board shall

file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless that time is extended by the court for good cause shown. The court shall have jurisdiction to grant any temporary relief or restraining order it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the decision or order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded by this section, apply to proceedings pursuant to this section.

(c) If the time to petition for extraordinary relief from a board decision or order has expired, the board may seek enforcement of any final decision or order in a district court of appeal or superior court having jurisdiction over the county where the events giving rise to the decision or order occurred. The board shall respond within 10 days to any inquiry from a party to the action as to why the board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the board's final decision or order, the board shall seek enforcement of the final decision or order upon the request of the party. The board shall file in the court the record of the proceeding, certified by the board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to the procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus or other proper process. The court may not review the merits of the order.

71825.2. Negotiations; written agreements; binding effect; enforcement; adoption of rules of court

(a) Any written agreements reached through negotiations held pursuant to this article are binding upon the parties, upon adoption under Section 71819, and, notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, any of those agreements may be enforced by petitioning the superior court for relief pursuant to Section 1085 or 1103 of the Code of Civil Procedure.

(b) Written agreements reached through negotiations held pursuant to this article that contain provisions requiring the arbitration of controversies arising out of the agreement, shall be subject to enforcement under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(c) The Judicial Council shall adopt rules of court that shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear petitions under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, and writ applications under Sections 1085 and 1103 of the Code of Civil Procedure, and as specified in those rules, from which a single justice shall be assigned to hear the matter in the superior court. The rules of court shall provide that these matters shall be heard in the superior court and, to the extent permitted by law, shall provide that any justice assigned to hear the matter in the superior court shall not be from the court of appeal district in which the action is filed, and shall further provide that appeals in those matters shall be heard in the court of appeal district where the matter was filed.

71826. Application of other law

(a) The enactment of this chapter may not be construed as making Section 923 of the Labor Code applicable to court interpreters.

(b) Court interpreters and the trial courts are not covered by Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, or any subsequent changes thereto except as provided in this chapter. However, if the language of this chapter is the same or substantially the same as that contained in Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, it shall be interpreted and applied in accordance with the judicial interpretations of the same language.

71827. Severability

If any provision of this chapter, or the application thereof, to any person or circumstances, is held invalid, the invalidity may not affect other provisions or application of the chapter that can be given effect without the invalid provisions or application and, to this end the provisions of this chapter are severable.

71828. Solano and Ventura Counties; interpreters excluded from chapter

(a) This chapter does not apply to trial courts in Solano and Ventura Counties. Labor and employment relations for court interpreters employed by trial courts in Solano and Ventura Counties shall remain subject to the Trial Court Employment Protection and Governance Act (Chapter 7 (commencing with Section 71600)), and nothing in this

chapter shall be construed to affect the application of that act to court interpreters employed by those counties.

(b) If an interpreter employed by a trial court in a different county accepts a temporary appointment to perform services for a trial court in Solano or Ventura County, the interpreter shall be treated for purposes of compensation, employee benefits, seniority, and discipline and grievance procedures, as having performed the services in the trial court in which the interpreter is employed.

(c) If an interpreter employed by a trial court in Solano or Ventura County accepts a temporary appointment to perform services for another trial court, the interpreter shall be treated for purposes of compensation, employee benefits, seniority, and discipline and grievance procedures, as having performed the services in the trial court in which the interpreter is employed.

(d) This chapter also does not apply to court interpreters who have been continuously employed by a trial court in any county beginning prior to September 1, 2002, and who are covered by a memorandum of understanding or agreement entered into pursuant to the Trial Court Employment Protection and Governance Act (Chapter 7 (commencing with Section 71600)), and to future employees hired in the same positions as replacements for those employees. For any other certified or registered interpreters hired by trial courts as employees prior to December 31, 2002, the trial courts may not change existing job classifications and may not reduce their wages and benefits during the regional transition period or during the term of an existing contract, whichever is longer.

71829. List of certified and registered court interpreters

The trial courts shall provide to the Judicial Council on or before March 1, 2003, a list of certified and registered court interpreters appointed by the trial courts as independent contractors between January 1, 2002, and January 1, 2003, including the number of court days or parts of court days those interpreters have been appointed by each trial court during that year and each of the prior four years. The Judicial Council shall provide this list to registered employee organizations.

**GOVERNMENT CODE
TITLE 23**

**IN-HOME SUPPORTIVE SERVICES
EMPLOYER-EMPLOYEE RELATIONS ACT**

**CHAPTER 1
GENERAL PROVISIONS**

110000. Short title

This title shall be known and may be cited as the In-Home Supportive Services Employer-Employee Relations Act.

110001. Purpose

It is the purpose of this title to promote full communication between the California In-Home Supportive Services Authority (the Statewide Authority) and the recognized employee organization representing individual providers by providing a reasonable method of resolving disputes regarding wages, benefits, and other terms and conditions of employment, as defined in Section 110023, between the Statewide Authority for in-home supportive services and recognized employee organizations. It is also the purpose of this title to promote the improvement of personnel management and employer-employee relations within the Statewide Authority by providing a uniform basis for recognizing the right of individual providers to join organizations of their own choice and be represented by those organizations for purposes of collective bargaining with the Statewide Authority. This title is intended to strengthen methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between the recognized employee organizations and the Statewide Authority. Except as expressly provided herein, this title is not intended to require changes in existing bargaining units or memoranda of agreement or understanding.

110002. Employee rights

Except as otherwise provided by the Legislature, employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters within the scope of representation. Employees also shall have the right to refuse to join or participate in the activities of employee organizations.

110003. Definitions

As used in this title:

(a) “Board” means the Public Employment Relations Board established pursuant to Section 3541.

(b) “Employee” or “individual provider” means any person authorized to provide in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and Sections 14132.95, 14132.952, and 14132.956 of the Welfare and Institutions Code, pursuant to the individual provider mode, as referenced in Section 12302.2 of the Welfare and Institutions Code. As used in this title, “employee” or “individual provider” does not include any person providing in-home supportive services pursuant to the county-employed homemaker mode or the contractor mode, as authorized in Section 12302 of the Welfare and Institutions Code. Individual providers shall not be deemed to be employees of the Statewide Authority for any other purpose, except as expressly set forth in this title.

(c) “Employee organization” means an organization that includes employees, as defined in subdivision (b), and that has as one of its primary purposes representing those employees in their relations with the Statewide Authority.

(d) “Employer” means, for the purposes of collective bargaining, the Statewide Authority established pursuant to Section 6531.5. The in-home supportive services recipient shall be the employer of an individual in-home supportive services provider with the unconditional and exclusive right to hire, fire, and supervise his or her provider.

(e) “In-home supportive services” or “IHSS” means services provided pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and Sections 14132.95, 14132.952, and 14132.956 of the Welfare and Institutions Code.

(f) “In-home supportive services recipient” means the individual who receives the in-home supportive services provided by the individual provider. The in-home supportive services recipient is the employer for the purposes of hiring, firing, and supervising his or her respective individual provider.

(g) “Mediation” means effort by an impartial third party to assist in reconciling a dispute regarding wages, benefits, and other terms and conditions of employment, as defined in Section 110023, between representatives of the employer and the recognized employee organization or recognized employee organizations through interpretation, suggestion, and advice.

(h) “Meet and confer in good faith” means that the employer, or those representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption of the annual Budget Act.

(i) “Predecessor agency” means a county or an entity established pursuant to Section 12301.6 of the Welfare and Institutions Code before the effective date of this title.

(j) “Recognized employee organization” means an employee organization that has been formally acknowledged as follows:

(1) Before the county implementation date as described in subdivision (a) of Section 12300.7 of the Welfare and Institutions Code, by a county or an entity established pursuant to Section 12301.6 of the Welfare and Institutions Code, as the representative of individual providers in its jurisdiction.

(2) On or after the county implementation date as described in subdivision (a) of Section 12300.7 of the Welfare and Institutions Code, by the Statewide Authority, as the representative of individual providers subject to this title.

(k) “Statewide Authority” means the California In-Home Supportive Services Authority established pursuant to Section 6531.5.

CHAPTER 2 TRANSITIONAL PROVISIONS

110004. Legislative intent

It is the intent of the Legislature to stabilize the labor and employment relations of individual providers in order to provide continuity of care and services to the maximum extent possible, and consistent with the responsibilities of the Statewide Authority under the act adding this title.

110005. County implementation date

For the purposes of this title, the county implementation date is defined in subdivision (a) of Section 12300.7 of the Welfare and Institutions Code.

110006. Employer of record

For purposes of collective bargaining, and as expressly set forth in subdivision (d) of Section 110003, the Statewide Authority is deemed to be the employer of record of individual providers in each county as of the county implementation date. In-home supportive services recipients shall retain the right to hire, fire, and supervise the work of the individual providers providing services to them.

110007. Individual providers employed by predecessor agency; clearance

Individual providers employed by any predecessor agency as of the county implementation date shall retain employee status and shall not be required by the Statewide Authority to requalify to receive payment for providing services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code. In the same manner as set forth in subdivision (e) of Section 12305.86 of the Welfare and Institutions Code, the Statewide Authority shall accept a clearance that was obtained or accepted by any predecessor agency pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code. Existence of a clearance shall be determined by verification through the case management, information, and payroll system of the predecessor agency that the predecessor agency has deemed the provider to be eligible to receive payment for providing services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

110008. Creation of separate bargaining units

On the county implementation date, separate bargaining units shall be created consistent with the bargaining units that have been recognized by predecessor agencies. Bargaining units consisting of employees in a single county shall be the only appropriate unit for collective bargaining under this title. In those counties where no recognized employee organization exists as of the county implementation date, a bargaining unit consisting of all employees in that county shall be deemed an appropriate unit for collective bargaining.

110009. Successor employer of predecessor agency

If, on the county implementation date, individual providers are represented by a recognized employee organization, the Statewide Authority shall be deemed the successor employer of the predecessor agency for the purposes of negotiating a collective bargaining agreement, and shall be obligated to recognize and to meet and confer in good faith with the recognized employee organization on all matters within the scope of representation, as defined in Section 110023, as to those individual providers.

110010. Manner of conducting negotiations

Negotiations between the Statewide Authority and recognized employee organizations shall be conducted only in the following manner:

- (a) As of July 1, 2012, all recognized employee organizations affiliated with the same national parent union shall negotiate as a coalition on behalf of all bargaining units they represent. If recognized employee organizations are affiliated with two or more different national parent unions, those recognized employee organizations shall also negotiate as a coalition on behalf of all bargaining units they represent.
- (b) An employee organization obtaining recognition after July 1, 2012, which is affiliated with the same national parent union or unions as the coalitions described in subdivision (a), shall become a part of the coalition affiliated with its same national parent union or unions.
- (c) An employee organization not affiliated with a national parent union covered by subdivision (a), that obtains recognition after July 1, 2012, and represents fewer than 100,000 employees subject to this title, shall negotiate as a member of a coalition, separate from the coalitions described in subdivision (a) and comprised of all those recognized employee organizations on behalf of all units they collectively represent. If that employee organization represents 100,000 or more employees subject to this title, it shall have the right to negotiate as its own coalition on behalf of all bargaining units it represents.
- (d) Each coalition negotiating with the Statewide Authority may enter into supplemental bargaining of unit-specific issues for inclusion in, or as an addendum to, collective bargaining agreements, subject to the parties' agreement regarding the issues

and procedures for supplemental bargaining. This section does not prohibit coordination of bargaining between two or more bargaining coalitions.

110011. Effect of enacting title on existing memorandum of understanding or agreement

(a) Except as otherwise expressly provided in this title, the enactment of this title shall not be a cause for the employer or any predecessor agency to modify or eliminate any existing memorandum of agreement or understanding, or to modify existing wages, benefits, or other terms and conditions of employment. Except to the extent set forth in this title, the enactment of this title shall not prevent the modification of existing wages, benefits, or terms and conditions of employment through the meet and confer in good faith process or, in those situations in which the employees are not represented by a recognized employee organization, through appropriate procedures.

(b) On the county implementation date, subject to Section 12306.15 of the Welfare and Institutions Code, the Statewide Authority shall assume the predecessor agency's rights and obligations under any memorandum of understanding or agreement between the predecessor agency and a recognized employee organization that is in effect on the county implementation date for the duration thereof. Absent mutual consent to reopen, the terms of any transferred memorandum of understanding or agreement shall continue until the memorandum of understanding or agreement has expired. If a memorandum of understanding or agreement between a recognized employee organization and a predecessor agency has expired and has not been replaced by a successor memorandum of understanding or agreement as of the county implementation date, the Statewide Authority shall assume the obligation to meet and confer in good faith with the recognized employee organization.

(c) Notwithstanding any other provision of law, except to the extent set forth in this chapter and as limited by Section 110023, the terms and conditions of any memorandum of understanding or agreement between a predecessor agency and a recognized employee organization in effect on the county implementation date shall not be reduced, except by mutual agreement between the recognized employee organization and the Statewide Authority.

(d) Nothing in this title shall be construed to relieve any predecessor agency of its obligation to meet and confer in good faith with a recognized employee organization pursuant to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1) until the county implementation date. Nothing in this title shall permit the predecessor agency to meet and confer after the Statewide

Authority assumes the predecessor agency's rights and obligations on the county implementation date.

(e) With the exception of all economic terms covered by Section 12306.15 of the Welfare and Institutions Code and notwithstanding any other provision of law, beginning July 1, 2012, and ending on the county implementation date as set forth in subdivision (a) of Section 12300.7 of the Welfare and Institutions Code, any alterations or modifications to either current or expired memoranda of understanding that were in effect on July 1, 2012, and any newly negotiated memoranda of understanding or agreements reached after July 1, 2012, shall be submitted for review to the State Department of Social Services, hereafter referred to as the department. This review requirement shall not begin until a county commences transition pursuant to subdivision (g) of Section 14132.275 of the Welfare and Institutions Code, and shall be performed by the department until the Statewide Authority becomes operational, after which date the Statewide Authority shall continue to perform this review requirement. If, upon review, but not later than 180 days after the county commences transition pursuant to subdivision (g) of Section 14132.275 of the Welfare and Institutions Code, the department or Statewide Authority reasonably determines that there are one or more newly negotiated or amended noneconomic terms in the memorandum of understanding or agreement to which it objects for a bona fide business-related reason, the department or Statewide Authority shall provide written notice to the signatory recognized employee organization of each objection and the reason for it. Upon demand from the recognized employee organization, the department, or the Statewide Authority, those parties shall meet and confer regarding the objection and endeavor to reach agreement prior to the county implementation date. If an agreement is reached, it shall not become effective prior to the county implementation date. If an agreement is not reached by the county implementation date, the objectionable language is deemed inoperable as of the county implementation date. All terms to which no objection is made shall be deemed accepted by the Statewide Authority. If the Statewide Authority or the department fails to provide the 180 days' notice of objection, it shall be deemed waived.

110012. Changes to locally administered health benefits; notice

If the Statewide Authority and the recognized employee organization negotiate changes to locally administered health benefits for individual providers, the Statewide Authority shall give 90 days' notice to the county and an entity established pursuant to Section 12301.6 of the Welfare and Institutions Code prior to implementation of the agreed-upon changes.

CHAPTER 3 ADMINISTRATION

110013. Legislative findings and declarations; applicability of title

The Legislature hereby finds and declares that collective bargaining for individual providers under this title constitutes a matter of statewide concern. Therefore, this title is applicable to all counties, notwithstanding charter provisions to the contrary, as set forth in Section 110005.

110014. Construction and application of language

Where the language of this title is the same or substantially the same as that contained in Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, it shall be interpreted and applied by the board in a manner consistent with and in accordance with judicial interpretations of the same language.

110015. Powers and duties of board

Except as provided in this title, the powers and duties of the board described in Sections 3541.3 and 3541.5 shall also apply, as appropriate, to this title. Included among the appropriate powers of the board are the powers to order elections, to conduct any election the board orders, to order unit modifications consistent with Section 110008, and to adopt rules.

110016. Decision of administrative law judge; final order of board

Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition, certification, decertification, or unit modification, consistent with Section 110008, of an employee organization is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision no later than 180 days after the appeal is filed.

110017. Petition for writ of extraordinary relief

(a) Any charging party, respondent, or intervener aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, and any party to a final decision or order of the board in a unit determination consistent with Section 110008, or in a representation, recognition, or election matter that is not brought as an unfair practice case, may petition for a writ

of extraordinary relief from that decision or order. A board order directing an election shall not be stayed pending judicial review.

(b) A petition for a writ of extraordinary relief shall be filed in the district court of appeal having jurisdiction over the county where the events giving rise to the decision or order occurred. The petition shall be filed within 30 days from the date of the issuance of the board's final decision or order, or order denying reconsideration, as applicable. Upon the filing of the petition, the court shall cause notice to be served upon the board and thereafter shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless that time is extended by the court for good cause shown. The court shall have jurisdiction to grant any temporary relief or restraining order it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the decision or order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded by this section, apply to proceedings pursuant to this section.

(c) If the time to petition for extraordinary relief from a board decision or order has expired, the board may seek enforcement of any final decision or order in a district court of appeal or superior court having jurisdiction over the county where the events giving rise to the decision or order occurred. The board shall respond within 10 days to any inquiry from a party to the action as to why the board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the board's final decision or order, the board shall seek enforcement of the final decision or order upon the request of the party. The board shall file in the court the record of the proceeding, certified by the board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to the procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus or other proper process. The court may not review the merits of the order.

CHAPTER 4

LABOR RELATIONS

110018. Immunity for lawful action as representative

No individual provider shall be subject to punitive action or denied promotion, or threatened with any such treatment, for the exercise of lawful action as an elected, appointed, or recognized representative of any employee bargaining unit.

110019. Agency shop arrangements

(a) Notwithstanding Section 110002, any other provision of this title, or any other law, rule, or regulation, an agency shop agreement may be negotiated between the employer and a recognized public employee organization that has been recognized as the exclusive or majority bargaining agent, in accordance with this title. As used in this title, “agency shop” means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization, to be determined by the organization in accordance with applicable law.

(b) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the Statewide Authority and a recognized employee organization that has been recognized as the exclusive or majority bargaining agent shall be placed in effect, without a negotiated agreement, upon (1) a signed petition of 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. The petition may be filed only after the recognized employee organization has requested the Statewide Authority to negotiate on an agency shop arrangement and, beginning seven working days after the Statewide Authority received this request, the two parties have had 30 calendar days to attempt good faith negotiations in an effort to reach agreement. An election that shall not be held more frequently than once a year shall be conducted by the State Mediation and Conciliation Service in the event that the Statewide Authority and the recognized employee organization cannot agree within 10 days from the filing of the petition to select jointly a neutral person or entity to conduct the election. In the event of an agency fee arrangement outside of an agreement that is in effect, the recognized employee organization shall indemnify and hold the Statewide Authority harmless against any

liability arising from a claim, demand, or other action relating to the Statewide Authority's compliance with the agency fee obligation.

(c) An individual provider who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support a public employee organization as a condition of employment. The employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to the dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three of these funds, designated in a memorandum of understanding between the employer and the recognized employee organization, or if the memorandum of understanding fails to designate the funds, then to a fund of that type chosen by the employee. Proof of the payments shall be made on a monthly basis to the employer as a condition of continued exemption from the requirement of financial support to the public employee organization.

(d) An agency shop provision in a memorandum of understanding that is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for that type of vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit, (2) the vote is by secret ballot, and (3) the vote may be taken at any time during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during that term.

(e) A recognized employee organization that has agreed to an agency shop provision or is a party to an agency shop arrangement shall keep an adequate itemized record of its financial transactions and shall make available annually, to the employer with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. Sec. 401 et seq.) covering employees governed by this title, or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the employer with a copy of the financial reports.

110020. Deductions of dues or service fees from salary or wages

(a) Nothing in this title shall affect the right of an employee to authorize a dues or service fees deduction from his or her salary or wages pursuant to Article 6 (commencing with Section 1150) of Chapter 1 of Division 4 of Title 1.

(b) Either the Controller or the State Department of Social Services shall deduct the payment of dues or service fees to a recognized employee organization as required by an agency shop arrangement between the recognized employee organization and the Statewide Authority.

(c) Agency fee obligations, including, but not limited to, dues or agency fee deductions on behalf of a recognized employee organization, shall continue in effect as long as the employee organization is the recognized bargaining representative, notwithstanding the expiration of any agreement between the employer and the recognized employee organization.

110021. Continuation of prior memorandum of understanding or agreement

If a predecessor agency is party to any memorandum of understanding or agreement with any bargaining unit that includes individual providers that contains an agency shop provision as of the effective date of this title, the predecessor agency and the employer shall be obligated to honor the terms of the agency shop provision, including indemnification provisions, if any, for the duration of the memorandum of understanding or agreement, and until the adoption of a successor memorandum of understanding or agreement. However, upon the request of a recognized employee organization, an agency shop provision in effect on the county implementation date may be reopened for the sole purpose of renegotiating the terms of that provision in accordance with this title. The implementation of this title shall not be a cause for a new agency shop election.

110022. Right to represent members in employment relations

Recognized employee organizations shall have the right to represent their members in their employment relations with the employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit an employee from appearing on his or her own behalf in his or her employment relations with the Statewide Authority.

110023. Scope of representation

(a) The scope of representation shall include all matters relating to wages, benefits, and other terms and conditions of employment. The scope of representation shall exclude the following functions performed by, or on behalf of, a county:

- (1) Determining an applicant's eligibility for IHSS benefits.
 - (2) Assessing, approving, and authorizing an IHSS recipient's initial and continuing need for services.
 - (3) Enrolling providers and conducting provider orientation.
 - (4) Conducting criminal background checks on all potential providers.
 - (5) Providing assistance to IHSS recipients in finding eligible providers through the establishment of a provider registry, as well as providing orientation to recipients.
 - (6) Pursuing overpayment recovery recollection.
 - (7) Performing quality assurance activities.
 - (8) Providing assistance to IHSS recipients through the establishment of emergency backup services.
 - (9) Performing any other function or responsibility required pursuant to statute or regulation to be performed by the county.
- (b) The scope of representation shall also exclude the IHSS recipient's right to hire, fire, and supervise the individual provider.

110024. Rules, policies and procedures; notice to employee organizations

(a) Except in cases of emergency as provided in this section, the Statewide Authority shall give reasonable written notice to each recognized employee organization affected by any rule, practice, or policy directly relating to matters within the scope of representation proposed to be adopted by the Statewide Authority and shall give each recognized employee organization the opportunity to meet with the Statewide Authority.

(b) In cases of emergency when the Statewide Authority determines that any rule, policy, or procedure must be adopted immediately without prior notice or meeting with a recognized employee organization, the Statewide Authority shall provide notice and an opportunity to meet at the earliest practicable time following the adoption of the rule, policy, or procedure.

110025. Meet and confer requirements

(a) Consistent with Section 12300.5 of the Welfare and Institutions Code, the Statewide Authority shall meet and confer in good faith regarding matters within the scope of representation with representatives of recognized employee organizations and shall consider fully those presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

(b) The process should include adequate time for the resolution of impasses pursuant to any impasse resolution procedure set forth in this title.

110026. Discrimination prohibited

The Statewide Authority and employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against employees because of the exercise of their rights under Section 110002.

110027. Recognition of employee organizations

(a) The Statewide Authority shall grant exclusive recognition to employee organizations designated or selected pursuant to rules established by the board for employees of the Statewide Authority or an appropriate unit thereof, subject to the right of an employee to represent himself or herself. The board shall establish reasonable procedures for petitions and holding elections and determining appropriate units consistent with Section 110008. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required.

(b) A bargaining unit in existence as of the effective date of this title shall remain in existence unless changed pursuant to subdivision (a).

110028. Memorandum of understanding; presentation for determination

If an agreement is reached by the representatives of the Statewide Authority and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written memorandum of the understanding, which shall not be binding, and present it to the Legislature for determination by majority vote.

110029. Mediation

(a) If, after a reasonable period of time, representatives of the Statewide Authority and the recognized employee organization fail to reach agreement, the dispute shall be referred to mediation before a mediator mutually agreeable to the parties. If the parties are unable to agree upon the mediator, either party may request the board to appoint a mediator in accordance with rules adopted by the board.

(b) The costs of mediation shall be divided one-half to the Statewide Authority and one-half to the recognized employee organization or recognized employee organizations.

110030. Factfinding panel; procedures

(a) If the parties are unable to effect settlement of the controversy within 30 days after the appointment of a mediator, the parties shall submit their differences to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, or any political subdivision of the state, shall furnish the panel, upon its request, with all records, papers, and

information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the employer.
- (5) Comparison of the wages, benefits, and terms and conditions of employment of the employees involved in the factfinding proceeding with the wages, benefits, and terms and conditions of employment of other employees performing similar services in comparable counties.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

110031. Factfinding panel; findings of fact and recommendations; costs

(a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The Statewide Authority shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson, whether selected by the board or agreed upon by the parties, shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(c) Any other mutually incurred costs shall be borne equally by the Statewide Authority and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(d) Nothing in this chapter shall be construed to prohibit the mediator appointed pursuant to Section 110029, upon mutual agreement of the parties, from continuing mediation efforts on the basis of the findings of fact and recommended terms of settlement made pursuant to Section 110031.

110032. Declaration of impasse; implementation of Statewide Authority's last, best and final offer

After the applicable mediation procedure has been exhausted, fact finding has been completed and made public, and no resolution has been reached by the parties, the Statewide Authority may declare an impasse and implement any or all of its last, best, and final offer. Any proposal in the Statewide Authority's last, best, and final offer that, if implemented, would conflict with existing statutes or require the expenditure of funds shall be presented to the Legislature for approval. The unilateral implementation of the Statewide Authority's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption of the annual budget or as otherwise required by law.

110033. Time off allowance to employee representatives

The Statewide Authority shall allow a reasonable number of representatives of recognized employee organizations reasonable time off without loss of compensation

or other benefits when formally meeting and conferring with representatives of the employer on matters within the scope of representation.

110034. Statewide Authority; prohibited actions

The Statewide Authority shall not do any of the following:

- (a) Impose or threaten to impose reprisals on individual providers, to discriminate or threaten to discriminate against individual providers, or otherwise to interfere with, restrain, or coerce individual providers because of their exercise of rights guaranteed by this title.
- (b) Deny to employee organizations the rights guaranteed to them by this title.
- (c) Refuse or fail to meet and negotiate in good faith with a recognized employee organization. For purposes of this subdivision, knowingly providing a recognized employee organization with inaccurate information regarding the financial resources of the Statewide Authority, whether or not in response to a request for information, constitutes a refusal or failure to meet and negotiate in good faith.
- (d) Dominate or interfere with the formation or administration of any employee organization, contribute financial or other support to any employee organization, or in any way encourage individual providers to join any organization in preference to another.
- (e) Refuse to participate in good faith in any applicable impasse procedure.

110034.5. Proceedings exempt from Bagley-Keene Open Meeting Act and Ralph M. Brown Act

All of the following proceedings are exempt from the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), unless the parties agree otherwise:

- (a) Any meeting, negotiation, or discussion between the Statewide Authority or its designated representative and a recognized or certified employee organization.
- (b) Any meeting of a mediator with either party or both parties to the meeting and negotiation process described in subdivision (a).

(c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator in connection with the activities described in subdivision (a).

(d) Any executive session of the Statewide Authority or between the Statewide Authority and its designated representative, including, but not limited to, the Department of Human Resources, for the purpose of discussing its position regarding any matter within the scope of representation and its designated representatives.

110035. Adoption of rules and regulations; recognition of employee organizations; challenge to rules and regulations

(a) The Statewide Authority may adopt reasonable rules and regulations for all of the following:

(1) Registering employee organizations.

(2) Determining the status of organizations and associations as employee organizations or bona fide associations.

(3) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

(4) Any other matters that are necessary to carry out the purposes of this title.

(b) The board shall establish procedures whereby recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of recognition.

(c) The Statewide Authority shall not unreasonably withhold recognition of employee organizations.

(d) Employees and employee organizations may challenge a rule or regulation of the Statewide Authority as a violation of this title. This subdivision shall not be construed to restrict or expand the board's jurisdiction or authority as set forth in subdivisions (a) to (c), inclusive, of Section 3541.3.

110035.5. Emergency regulations

(a) The board and the Statewide Authority may adopt emergency regulations to implement this title. The initial adoption, amendment, or repeal of the regulations authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6, and the board and the Statewide Authority are hereby exempted for that purpose from the requirements of subdivision (b) of Section 11346.1. After the initial adoption, amendment, or repeal of an emergency regulation pursuant to this section, the board and the Statewide Authority shall not request approval from the Office of Administrative Law to readopt the regulation as an emergency regulation pursuant to Section 11346.1.

(b) The adoption, amendment, or repeal of a regulation authorized by this section is hereby exempted from subdivision (d) of Section 11346.1 and Section 11349.6, and the board or Statewide Authority shall transmit the regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing with the Secretary of State.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

110036. Severability

The provisions of this title are severable. If any provision of this title or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**PUBLIC UTILITIES CODE
DIVISION 10, PART 11**

**CHAPTER 7
TRANSIT EMPLOYER-EMPLOYEE RELATIONS**

**ARTICLE 1
GENERAL PROVISIONS**

99560. Legislative findings and declarations

The Legislature hereby finds and declares that:

(a) The people of this state have a fundamental interest in the development of harmonious and cooperative labor relations between public transit districts and their employees.

(b) Public transit districts are not subject to a common statewide statutory scheme or an administrative agency that has jurisdiction over the conduct of employer-employee relations.

(c) Other public sector employees in the state have been granted the opportunity for collective bargaining through the adoption of the Meyers-Milias Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code), the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code), the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code), and the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code), and it would be advantageous and desirable to expand the jurisdiction of the Public Employment Relations Board to cover the employees of public transit districts.

(d) The people and the public transit district employers each have a fundamental interest in the preservation and promotion of the responsibilities granted by the people of this state. Harmonious relations between each public transit district employer and its employees are necessary to that endeavor.

(e) It is the purpose of this chapter to provide the means by which relations between the Los Angeles County Metropolitan Transportation Authority and their supervisory employees may assure that the responsibilities and authorities granted to each transit

district by statute are carried out in an atmosphere that permits the fullest participation by employees in the determination of conditions of employment which affect them. It is the intent of this chapter to accomplish this purpose by providing a uniform basis for recognizing the right of the employees of these transit districts to full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of representation in their employment relationships with their employers and to select one employee organization as their exclusive representative for the purpose of meeting and conferring.

(f) It is the further purpose of this chapter to provide orderly and clearly defined procedures for meeting and conferring and the resolution of impasses, and to define and prohibit certain practices that are inimical to the public interest.

99560.1. Definitions

As used in this chapter, the following words have the following meanings:

(a) “Arbitration” means a method of resolving a rights dispute under which the parties to a controversy must accept the award of a third party.

(b) “Board” means the Public Employment Relations Board established pursuant to Section 3541 of the Education Code.

(c) “Certified organization” means an employee organization that has been certified by the board as the exclusive representative of the public transit district employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 99564).

(d) “Confidential employee” means any employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information that contributes significantly to the development of those management positions.

(e) “Employee” or “transit district employee” means any supervisory employee of any public transit district employer except for confidential employees.

(f) (1) “Employee organization” means any organization of any kind in which public transit district employees participate and that exists for the purpose, in whole or in part, of dealing with public transit district employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of employees.

(2) “Employee organization” shall also include any person that an employee organization authorizes to act on its behalf.

(g) (1) “Employer” or “transit district employer” means the governing board of a public transit district, including any person acting as an agent of an employer.

(2) “Employer” or “transit district employer” shall also include the Public Transportation Services Corporation established by the Los Angeles County Metropolitan Transportation Authority, including any person acting as an agent of the employer.

(3) “Employer” or “transit district employer” shall also include any organizational unit established pursuant to paragraph (2) of subdivision (a) of Section 130051.11, including any person acting as an agent of the employer.

(4) “Employer” or “transit district employer” shall also include any transportation zone established pursuant to paragraph (8) of subdivision (a) of Section 130051.12, including any person acting as an agent of the employer.

(h) “Employer representative” means any person or persons authorized to act on behalf of the employer.

(i) “Exclusive representative” means any recognized or certified employee organization or person it authorizes to act on its behalf.

(j) “Impasse” means that the parties have reached a point in meeting and conferring at which their differences in positions are such that further meetings would be futile.

(k) “Managerial employee” means any employee having significant responsibilities for formulating or administering policies and programs of the public transit district.

(l) “Meet and confer” means the performance of the mutual obligation of the public transit district employer and the exclusive representative of the public transit district employees to meet at reasonable times and to confer in good faith with respect to matters within the scope of representation and to endeavor to reach agreement on matters within the scope of representation. The process shall include adequate time for the resolution of impasses. If agreement is reached between representatives of the public transit district employer and the exclusive representative, they shall jointly prepare a written memorandum of the understanding, which shall be presented to the

transit district employer for concurrence. However, these obligations shall not compel either party to agree to any proposal or require the making of a concession.

(m) “Person” means one or more individuals, organizations, associations, corporations, boards, committees, commissions, agencies, or their representatives.

(n) “Recognized organization” means an employee organization that has been recognized by an employer as the exclusive representative of the employees in an appropriate unit pursuant to Article 5 (commencing with Section 99564).

(o) “Supervisory employee” means any employee of a public transit district, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action if, in connection with these functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

99560.2. Short title

This chapter shall be known and may be referred to as the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act.

99560.3. Application of chapter

This chapter shall only apply to supervisory employees of the Los Angeles County Metropolitan Transportation Authority.

ARTICLE 2 ADMINISTRATION

99561. Public Employment Relations Board; powers and duties

This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all of the following rights, powers, duties, and responsibilities:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

- (b) To determine in disputed cases whether a particular item is within or without the scope of representation.
- (c) To arrange for, and supervise, representation elections that shall be conducted by means of secret ballot elections, and to certify the results of the elections.
- (d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall the lists include persons who are on the staff of the board.
- (e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.
- (f) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.
- (g) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction, except for those records, books, or papers confidential under statute. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing by the board under this section, except a hearing to determine an unfair practice charge.
- (h) To investigate unfair practice charges or alleged violations of this chapter, and to take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.
- (i) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(j) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it, and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(k) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(l) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(m) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

99561.1. Interference with board; penalties

Any person who shall willfully resist, prevent, impede, or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars (\$1,000).

99561.2. Initial determination on charges

The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board.

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

(b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

99561.3. Cease and desist orders

The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take affirmative action, that includes, but is not limited to, the reinstatement of employees with or without backpay, that will effectuate the policies of this chapter.

99561.4. Appeal of administrative law judge decision regarding recognition or certification of employee organization; final order of board

Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization as described in subdivision (k) of Section 99561 is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

**ARTICLE 3
JUDICIAL REVIEW**

99562. Right to review; petition; enforcement of decisions and orders

(a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review. Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in the case, may petition for a writ of extraordinary relief from the decision or order.

(c) The petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable. Upon

the filing of the petition, the court shall cause notice to be served upon the board and thereafter shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless the filing period is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board any temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, are conclusive. The provisions of Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded by this article, apply to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the district where the unit determination or unfair practice case occurred. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus. The court shall not review the merits of the order.

ARTICLE 4

RIGHTS, OBLIGATIONS, PROHIBITIONS, AND UNFAIR LABOR PRACTICES

99563. Participation in employee organizations

Transit district employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations and for the purpose of meeting and conferring and shall have the right to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Transit district employees shall also have the right to refuse to join employee organizations or to participate in the activities of these organizations subject to the organizational security provision permissible under this chapter.

99563.1. Deductions from wages and salaries

Notwithstanding the provisions of the Government Code or other laws or statutes, the transit district employer shall make deductions from wages and salaries of its

employees upon receipt of authorization for the payment of union dues, fees, or assessments, for the payment of contributions pursuant to any health and welfare plan or pension plan or any other purpose for which deductions may be authorized by employees where the deductions are pursuant to a collective bargaining agreement with a duly designated or certified labor organization.

99563.2. Access by employee organizations

Subject to reasonable regulations, employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use transit district bulletin boards, mailboxes and other means of communication, and the right to use transit district facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

99563.3. Released or reassigned time from work

A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released or reassigned time without loss of compensation when engaged in meeting and conferring and for the processing of grievances prior to the adoption of the initial memorandum of understanding. When a memorandum of understanding is in effect, released or reassigned time shall be in accordance with the memorandum.

99563.4. Meet and confer requirement

Transit district employers, or the representatives as they may designate, shall engage in meeting and conferring with the employee organization selected as exclusive representative of an appropriate unit on all matters within the scope of representation.

99563.5. Scope of representation

(a) The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment.

(b) Notwithstanding subdivision (a), the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

99563.6. Time for negotiations

The duty to meet and confer in good faith requires the parties to begin negotiations prior to the adoption of the final budget for the ensuing year sufficiently in advance of the adoption date so there is adequate time for agreement to be reached, or for the resolution of impasse.

99563.7. Employers; unlawful practices

It shall be unlawful for the transit district employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, “employee” includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and confer with an exclusive representative.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. However, subject to rules and regulations adopted by the board pursuant to Section 99561, an employer shall not be prohibited from permitting employees to engage in meeting and conferring or consulting during working hours without loss of pay or benefits.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 99568).

99563.8. Employee organizations; unlawful practices

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause the transit district employer to violate Section 99563.7.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet and confer with the transit district employer.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 99568).

ARTICLE 5

EMPLOYEE ORGANIZATIONS: REPRESENTATION, RECOGNITION, CERTIFICATION, AND DECERTIFICATION

99564. Request for recognition as exclusive representative

An employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and conferring by filing a request with a transit district employer alleging that a majority of the employees in an appropriate unit wish to be represented by the organization and asking the employer to recognize it as the exclusive representative. The request shall describe the grouping of jobs or positions that constitute the unit claimed to be appropriate and shall certify that proof of majority support has been submitted to either the board or to a mutually agreed upon third party. Notice of any such request shall immediately be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.

99564.1. Approval of request for recognition

The transit district employer shall grant a request for recognition filed pursuant to Section 99564 except in one of the following circumstances:

(a) The employer reasonably doubts that the employee organization has majority support or reasonably doubts the appropriateness of the requested unit. In that case the employer shall notify the board which shall conduct a representation election pursuant to Section 99564.4 unless subdivision (c) or (d) applies.

(b) Another employee organization either files with the employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. If the claim is evidenced by the support that at least 30 percent of the members of the proposed unit, a question of representation shall be deemed to exist and the board shall conduct a representation election pursuant to Section 99564.4, or if the claim is evidenced by the support of at least 10 percent of the members of the proposed unit, the board shall conduct inquiries

and investigations or hold hearings that it deems necessary in order to decide the questions raised by the claim and may conduct a representation election pursuant to Section 99564.4. Evidence of that support shall be submitted to either the board or to a mutually agreed upon third party.

(c) There is currently in effect a lawful written memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the request for recognition, unless the request for recognition is filed not more than 120 days and not less than 90 days prior to the expiration date of such memorandum of understanding. However, if a memorandum of understanding has been in effect for three years or more, there shall be no restriction as to the time of filing the request.

(d) Within the previous 12 months either another employee organization has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the request for recognition, or a majority of the votes cast in a representation election held pursuant to Section 99564.4 were cast for “no representation.”

99564.2. Petition; selection of exclusive representative

A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by one of the following:

(a) An employee organization alleging that it has filed a request for recognition as an exclusive representative with an employer and that the request has been denied or has not been acted upon within 30 days after the filing of the request.

(b) An employee organization alleging that it has filed a competing claim of representation pursuant to subdivision (b) of Section 99564.1.

(c) An employee organization wishing to be certified by the board as the exclusive representative. The petition for certification as the exclusive representative in an appropriate unit shall include proof of a 30-percent showing of interest designating the organization as the exclusive representative of the employees.

99564.3. Petition; decertification of exclusive representative

A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether the employees wish to decertify an exclusive representative or to reconsider the appropriateness of a unit. The petition may allege that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative. The petition shall include proof of a 30-percent showing of interest indicating support for another organization or lack of support for the incumbent exclusive representative.

99564.4. Elections

(a) Upon receipt of a petition filed pursuant to Section 99564.2, the board shall conduct inquiries and investigations or hold hearings as it deems necessary in order to decide the questions raised by the petition. The determination of the board may be based upon the evidence adduced in the inquiries, investigations, or hearings. If the board finds on the basis of the evidence that a question of representation exists, or a question of representation is deemed to exist pursuant to subdivision (a) or (b) of Section 99564.1, it shall order that an election shall be conducted by secret ballot placing on the ballot all employee organizations evidencing support of at least 10 percent of the members of an appropriate unit, and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast. There shall be printed on the initial ballot the choice of “no representation.” If, at any election, no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted. The ballot for the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) No election shall be held and the petition shall be dismissed whenever either of the following exists:

(1) There is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the petition, unless the petition is filed not more than 120 days and not less than 90 days prior to the expiration date of the memorandum. However, if the memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition.

(2) Within the previous 12 months either an employee organization other than the petitioner has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the petition, or a majority of the votes

cast in a representation election held pursuant to subdivision (a) were cast for “no representation.”

99564.5. Employee organizations’ duty of fair and impartial representation

The employee organization recognized or certified as the exclusive representative shall represent all employees in the unit, fairly and impartially. A breach of this duty shall be deemed to have occurred if the employee organization’s conduct in representation is arbitrary, discriminatory, or in bad faith.

**ARTICLE 6
UNIT DETERMINATION**

99565. Criteria for appropriate units; exception

(a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which the employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account factors such as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the transit district employer, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of the transit district employer and its employees to serve the public.

(4) The number of employees and classifications in a proposed unit, and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employee groups or any proliferation of units among the employees of the employer.

(b) The board shall not determine that any unit is appropriate if it includes, together with other employees, employees who are defined as peace officers pursuant to subdivisions (b) and (c) of Section 830.2 of the Penal Code.

ARTICLE 7 ORGANIZATIONAL SECURITY

99566. Organizational security within scope of representation

Subject to the limitations set forth in this chapter, organizational security shall be within the scope of representation.

99566.1. Collection of fair share service fees

(a) Notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a transit district employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Agency fee payers shall have the right, pursuant to regulations adopted by the board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented

employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d) (1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the negotiating unit, and the signatures are obtained in one year. There shall not be more than one vote taken during the term of any collective bargaining agreement.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(e) The recognized employee organization shall indemnify and hold the transit district employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the transit district's compliance with this section. The recognized employee organization shall have the exclusive right to determine whether any such action or proceeding shall or shall not be compromised, resisted, defended, tried, or appealed. This indemnification and hold harmless duty shall not apply to actions related to compliance with this section brought by the exclusive representative of transit district employees against the transit district employer.

(f) The employer of a transit district employee shall provide the exclusive representative of an employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in *Chicago Teachers Union v. Hudson* (1986) 475 U.S. 292.

99566.2. Religious objections to membership

(a) Notwithstanding subdivision (i) of Section 99560.1, Section 99566, or any other provision of this chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment except as provided in subdivision (b).

(b) The employee may be required, in lieu of a service fee, to pay sums equal to the service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c)(3) of Title 26 of the Internal Revenue Code, chosen by the employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate funds, then to any such fund chosen by the employee. Either the employee organization or the transit district employer may require that proof of the payments be made on an annual basis to the transit district employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If the employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using that procedure.

99566.3. Record of financial transactions; report

Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report of its financial transactions in the form of a balance sheet and an operating statement, signed and certified as to accuracy by its president and treasurer, or corresponding principal officers. In the event of noncompliance with this section, any employee within the organization may petition

the board for an order compelling compliance, or the board may issue a compliance order on its motion.

ARTICLE 8 RIGHTS-DISPUTES ARBITRATION

99567. Arbitration procedures

(a) An employer and an exclusive representative who enter into a written memorandum of understanding may agree to procedures for final and binding arbitration of disputes that may arise under the memorandum of understanding or between the parties.

(b) Where a party to a memorandum of understanding is aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the procedures provided in the memorandum, the aggrieved party may bring proceedings pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure for a court order directing that the arbitration proceed pursuant to the procedures provided in the memorandum of understanding.

(c) An arbitration award made pursuant to this section shall be final and binding upon the parties and may be enforced by a court pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(d) The board shall submit a list of names of arbitrators to employers and employee organizations upon their mutual request. Nothing in this subdivision shall preclude the parties from mutually agreeing to some other means of selecting an arbitrator. The board shall also, if mutually requested to do so, designate an arbitrator to hear and decide the rights dispute.

ARTICLE 9 IMPASSE PROCEDURES

99568. Impasse procedures

The impasse procedures contained in Chapter 9 (commencing with Section 1137) of Part 3 of Division 2 of the Labor Code shall govern any impasse proceedings under this chapter.

ARTICLE 10 PUBLIC NOTICE

99569. Public meetings and comments

- (a) All initial proposals of exclusive representatives and of transit district employers, that relate to matters within the scope of representation, shall be presented at a public meeting of the transit district employer and thereafter shall be public records.
- (b) Meeting and conferring shall not commence on an initial proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the transit district employer.
- (c) After the public has had the opportunity to express itself, the transit district employer shall, at a meeting that is open to the public, adopt a proposal, including any changes to its initial proposal that the transit district employer deems appropriate based on the public's comments.
- (d) New subjects of meeting and conferring arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on a new subject by the transit district employer, the vote on the subject by each member voting shall also be made public within 24 hours.
- (e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section, that the public be informed of the issues that are being met and conferred upon and have full opportunity to express their views on the issues to the transit district employer, and to know of the positions of the transit district employer.

ARTICLE 11 MISCELLANEOUS

99570. Exemption from Ralph M. Brown Act

The following proceedings set forth in this section are exempt from the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), unless the parties mutually agree otherwise:

(a) Any meeting and conferring discussion between a transit district employer and a recognized or certified employee organization.

(b) Any meeting of a mediator with either party or both parties to the meeting and conferring process.

(c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.

(d) Any executive session of the transit district employer or between the transit district employer and its designated representatives for the purpose of discussing its position respecting meeting and conferring or regarding any matter within the scope of representation or instructing its designated representatives.

99570.1. Federal and state laws prohibiting discrimination

No memorandum of understanding shall contravene any federal or state law, including rules and regulations promulgated pursuant to such laws, prohibiting discrimination in employment.

99570.2. Severability

If any provision of this chapter or the application of such provision to any person or circumstance shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

99570.3. Preservation of employee rights

(a) Nothing in this chapter shall be construed to deprive employees of their rights pursuant to the Urban Mass Transportation Act of 1964 (49 U.S.C. Section 5301 et seq.) and the agreements entered into pursuant to Section 5333(b) of Title 49 of that act.

(b) Nothing in this chapter shall be construed to deprive employees of their rights pursuant Sections 130051.24 and 130110 of the Public Utilities Code.

99570.4. Other labor provisions

For employees of the Los Angeles Metropolitan Transportation Authority covered under this chapter, this chapter shall supersede subdivisions (a) to (c), inclusive, of Section 30750 and Sections 30751 and 30755.

**PUBLIC UTILITIES CODE
DIVISION 10. TRANSIT DISTRICTS
PART 16. SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**

**CHAPTER 5
PERSONNEL**

**ARTICLE 1
EMPLOYEE RELATIONS**

105140. Application of Meyers-Milias-Brown Act provisions

Except as otherwise provided in this article and in Article 2 (commencing with Section 105150), the determination of questions concerning employee representation and the conduct of employee-employer relations within the district shall be governed by the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code).

105141. Scope of representation; arbitration procedures

Except as otherwise provided in Article 2 (commencing with Section 105150), whenever a majority of the employees employed by the district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, and upon determining that the labor organization represents at least a majority of the employees in the appropriate unit, the board and the accredited representative of employees shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, hours, and other terms and conditions of employment within the scope of representation set forth in Section 3504 of the Government Code.

105142. Submission of dispute to arbitration board

(a) If, after a reasonable period of time, representatives of the district and the accredited representatives of the employees fail to reach agreement either on the terms of a written contract governing wages, hours, and other terms and conditions of employment or the interpretation or application of the terms of an existing contract, upon the agreement of both the district and the representatives of the employees, the dispute may be submitted to an arbitration board.

(b) The arbitration board shall be composed of two representatives of the district and two representatives of the labor organization, and they shall endeavor to agree upon the selection of a fifth member. If they are unable to agree, the names of five persons experienced in labor arbitration shall be obtained from the State Conciliation Service. The labor organization and the district shall, alternately, strike a name from this list, and the name remaining after the labor organization and the district have stricken four names shall be designated as the fifth arbitrator and chairperson of the board of arbitration. The labor organization and the district shall determine by lot who shall first strike a name from the list. The decision of a majority of the arbitration board shall be final and binding upon the parties thereto.

(c) Each party shall be responsible for the expense of the presentation of its case. All other expenses of arbitration shall be borne equally by the parties and the expenses may include the making of a verbatim record of the proceedings and transcript of that record.

105143. Management services; scope of authority to contract out services

The district may contract for management services with any public agency or person and may contract for operations and maintenance services with the district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code. However, the district may not contract out the performance of services performed by or fairly claimable by employees of a bargaining unit without the agreement of the accredited representative of that bargaining unit's employees.

**ARTICLE 2
TRANSFER OF COLLECTIVE BARGAINING RIGHTS**

105150. Legislative findings and declarations; district organized pursuant to Bridge and Highway District Act

The Legislature hereby finds and declares that the creation of the district may adversely affect the collective bargaining rights, wages, benefits, and employment opportunities of employees of the district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code.

105151. Establishment of collective bargaining units

Notwithstanding the provisions of Article 1 (commencing with Section 105140), in order to protect and preserve the collective bargaining rights of employees of the

district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code, whose employment opportunities may be adversely affected by the adoption and implementation of this division, upon the district's decision to commence rail service, the district shall establish at least three collective bargaining units comprised of the following:

- (a) A transportation operators collective bargaining unit.
- (b) A transportation maintenance collective bargaining unit.
- (c) A transportation dispatch and equipment servicing collective bargaining unit.

For purposes of this section, the district's decision to commence rail service shall be effected by the district's adoption of a resolution that confirms that sufficient financing exists to undertake rail service and declares the intention of the district to take all reasonable and necessary steps to commence rail service.

105152. Priority of employment; resolution of disputes

For a period of four years, commencing with the district's decision to commence rail service as provided in Section 105151, or until the expiration of the current collective bargaining agreement, whichever is later, employees of the district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code, who are employed by that district in classifications assigned to the same or similar collective bargaining units as those set out in Section 105151, shall be given priority of employment within the collective bargaining units set forth in Section 105151. Any dispute arising over the appropriate placement within a collective bargaining unit or over any assignment of classifications made by the district to a bargaining unit set forth in Section 105151 shall be resolved by the Public Employee Relations Board. Any determination of the Public Employee Relations Board shall be consistent with the intent of this section.

105153. Recognition of accredited representatives

The district shall recognize and bargain with, as the accredited representative of the employees within the collective bargaining units set forth in Section 105151, the accredited collective bargaining representatives that represent the same or similar bargaining units within the district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code. This recognition shall be maintained unless changed by mutual agreement of the district and the affected

collective bargaining representative or the representative is decertified in accordance with the rules and procedures of the Public Employee Relations Board for the certification and decertification of employee representatives.

105154. Seniority credits and seniority-based benefits

Employees of the district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code who transfer to the district and into a collective bargaining unit set forth in Section 105151, shall be credited with any accrued seniority earned at the district from which they have transferred, and shall not suffer a loss in their rate of wages, pension benefits, pension accrual rights, health benefits, retiree health benefits, vacation accrual, or other seniority-based benefits, such as job bidding and transfer rights, as a result of their transfer to the district.

105155. Joint collective bargaining; reciprocity agreements through PERS

To facilitate implementation of the employee rights enumerated in this section, the district and the district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code may engage in joint collective bargaining with the accredited representatives of the collective bargaining units set forth in Section 105151 and the same or similar collective bargaining units within the district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code to establish uniform wages, health benefits, pension benefits, and other uniform terms and conditions of employment. To maintain continuity of pension benefits, the district shall have the right to appoint at least one representative to any joint labor-management retirement board that administers a retirement plan in which employees of the district and employees of the district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code are participants, provided that an equal number of employer and employee representatives on the retirement board is maintained. In addition, the district shall enter into a reciprocity agreement through the Public Employees' Retirement System (PERS) which recognizes PERS service with the district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code of any district employee employed in a collective bargaining unit set forth in Section 105151 whose members' pensions are provided through PERS.

ARTICLE 3

RIGHTS OF EMPLOYEES OF EXISTING FACILITIES

105160. Appointment to comparable positions; benefits

(a) Whenever the district acquires existing facilities from a publicly or privately owned utility, either in proceedings by eminent domain or otherwise, to the extent necessary for operation of facilities, all of the employees of the utility whose duties pertain to the facilities acquired who have been employed by the utility for at least 75 days shall be appointed to comparable positions in the district without examination. These employees shall be given sick leave, seniority, and vacation credits in accordance with the records of the acquired public utility. No employee of any acquired public utility shall suffer any worsening of wages, seniority, pension, vacation, or other benefits by reason of the acquisition.

(b) The provisions of this section shall not apply to officers or managerial employees of the acquired utility except as designated by the board.

105161. Pension plans and benefits

Whenever the district acquires existing facilities from a publicly or privately owned utility, either in proceedings in eminent domain or otherwise, that has a pension plan in operation, members and beneficiaries of the pension plan shall continue to have the rights, privileges, benefits, obligations, and status with respect to the established system. The outstanding obligations and liabilities of the public utility by reason of that pension plan shall be considered and taken into account and allowance made therefor in the purchase price of the public utility. The persons entitled to pension benefits as provided in this section and the benefits that are provided shall be specified in the agreement or order by which any public utility is acquired by the district.

ARTICLE 4

RETIREMENT SYSTEM

105170. Adoption, terms and conditions of system to be pursuant to a collective bargaining agreement

The adoption, terms, and conditions of any retirement system covering employees of the district in a bargaining unit represented by a labor organization shall be pursuant to a collective bargaining agreement between the labor organization and the district. For purposes of this section, “officers” does not include members of the board.

105171. Authority to contract with other systems

The board may contract with the Board of Administration of the Public Employees' Retirement System or with a retirement system maintained pursuant to the County Employees Retirement Law of 1937 and enter all, or any portion, of its employees under either of those systems. Employees of the district in a bargaining unit that is represented by a labor organization shall not be included in the contract except as authorized by a collective bargaining agreement.

105172. Acquired public utilities

All persons receiving pension benefits from an acquired public utility, and all persons entitled to pension benefits under any pension plan of the acquired public utility, may become members or receive pensions under a pension plan established by the district by mutual agreement of those persons and the district. The agreement may provide for the waiver of all rights, privileges, benefits, and status with respect to the pension plan of the acquired public utility.

**ARTICLE 5
OTHER BENEFITS**

105180. Coverage under federal acts

The district shall obtain coverage for the district and its employees under Title II of the federal Social Security Act, as amended, (42 U.S.C. Sec. 401 et seq.) and the related provisions of the Federal Contributions Act, as amended (26 U.S.C. Sec. 3101 et seq.).

105181. State programs

The district shall obtain coverage for the district and its employees under the workers' compensation, unemployment compensation, and disability and unemployment insurance laws of this state.

